United States Court of Appeals

for the Second Circuit

APPELLANT'S APPENDIX

NO. 76-1041

B
P/S

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

Docket No. 76-1041

UNITED STATES OF AMERICA,

Appellee,

V.

DAVID GUILLETTE and
ROBERT JOOST,

Appellants,

ON APPEAL FROM THE UNITED STATES DISTRICT OCURT
FOR THE DISTRICT OF CONNECTICUT

APPELLANTS' APPENDIX

Hubert J. Santos
Special Public Defender
51 Russ Street
Hartford, Connecticut
Attorney for David Guillette

James A. Wide
Special Public Defender
799 Main Street
Hartford, Connecticut
Attorney for Robert Joost

UNITED STATES COURT OF APPEALS
FILED
MAY 4 1976
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

PAGINATION AS IN ORIGINAL COPY

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CRIMINAL DOCKET
ITED STATES DISTRICT COURT

D. C. Form No. 100 Rev.

CRIMINAL H-524

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	*For U. S.:*
vs.	
DAVID GUILLETTE ET ALS.	
	For Defendant:

STATISTICAL RECORD	COSTS			DATE 1974	NAME OR RECEIPT NO.	REC.		DISB.	
J.S. 2 mailed	Clerk			10/31	R.J.Daniels (Appeal)	5	00		
J.S. 3 mailed	Marshal			11/13	Deposit (G.F.100869)			5	00
Violation	Docket fee								
Title									
Sec.									

DATE	PROCEEDINGS

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

JON O. NEWMAN

D. C. Form No. 100 Rev.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	Criminal H-524 For U.S.: Defendants
vs. Wm. Marrapese -	Paul W. Orth
DAVID GUILIETTE ET ALS.	266 Pearl St. Hartford, Conn. and Stanford Shaukler 1314 Chestnut St.-12th Fl. Phila. Pa. 19107 ph 215-732-3400
	For Defendant:
Nicholas Zinni -	Charles P. Ferland 275 North Main St. Danielson, Conn.
" "	[illegible] See
751-9800	12/2/74

STATISTICAL RECORD	COSTS		DATE	NAME OR RECEIPT NO.	REC.	DISB.

CRIMINAL DOCKET
UNITED STATES DISTRICT COURT

T. EMMET CLARIE

D. C. Form No. 100 Rev.

H 521

TITLE OF CASE	ATTORNEYS
THE UNITED STATES vs. DAVID GUILLETTE, ROBERT JOOST, WILLIAM MARRAPESE, NICHOLAS ZINNI N. Zinni - Wm. Marrapese -Raymond Daniels (401) 86 Weybosset St.-Suite 502 ph- 351-3311 Providence, Rhode Island-02903 JOOST - James A. Wade, Appt. Wm. Marrapese 799 Main St. Hartford, Conn. 06103 GUILLETTE - Hubert Santos, Pub. Def. Nicholas Zinni - 450 Main St. 51 Russ St. (Appt. 9/12/74) Hartford, Conn. Phone: 249-6548	For U.S.: Stewart H. Jones, US Attorne Paul E. Coffey, Spec. Atty. 450 Main St.,Hartford, Conn. For defendants: C. Thomas ZinniAppt.8/17/7 53 Mount Vernon St. Boston, Mass. 02108 ph-617-523-3245 For Defendant [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] Jr. wi.h- drawn [illegible]

STATISTICAL RECORD	COSTS			DATE 1974	NAME OR RECEIPT NO.	REC.		DISB.	
J.S. 2 mailed	Clerk			7/9	R. Daniels (Appeal)	5	00		
J.S. 3 mailed	Marshal			7/11	C.T.Zinni (Appeal)	5	00		
Violation U. S. Code	Docket fee			7/15	Deposit (G.F.100869)			10	00
Title 18				8/7	C.Thomas Zinni (Payment in full for contempt proceedings)	740.00			
Sec. 241, 1503 & 844(h)(1)				8/15	Deposit: G.F.103099			740.00	

DATE 1973	PROCEEDINGS
6/14	The Grand Jury at Hartford returned a True Bill of Indictment charging violation of 18 USC 241 in ct. 1 -conspire, confederate and agree together and with each other to injure, oppress, threaten and intimidate a citizen of the USA in the free exercise and enjoyment of a right and privilege secured to him by the Constitution and laws of the U.S.; 18 USC 1503 in ct. 2 - endeavored, by force and violence, to influence, intimidate and impede a witness in the Court of the U. S.; and 18 USC 844(h)(1) in ct. 3 - use an explosive to commit a felony prosecutable in a court of the U.S. Indictment ordered sealed for 30 days or until Defendants have been arrested and are in custody. Bench Warrants to issue. Bonds set at $100,000.00 with full surety for Defendants Guillette and Joost. Bond set at $50,000.00 with full surety for Defendants, Marrapese and Zinni. Bench Warrants to issue. (Clarie,J.) m- 6/15/73
6/15	Bench Warrants issued in duplicate for each defendant and with certified copies of the indictment handed US Marshal for service.
6/18	Motion For Reduction of Bail, filed, for each of four defendants. Notice of Appearance to be filed by Atty. [illegible]

DATE	PROCEEDINGS
18cont'd	...shall remain. Motion Denied. (Clarie,J.)m-6/19/73
/25	Bonds in the amount of $50,000.00 with full surety (Public Service Mutual Ins. Co. by Barbara A. Jacobs) filed for Defendants William Marrapese and Nicholas Zinni.(Newman, J.)M6/25/73
6/25	ZINNI - PLEA of not guilty entered on 3 counts. Same bond to continue.
	JOOST - Over to July 9th to botain counsel.
	MARRAPESE - Appearance filed by Atty. Bucci. PLEA of not guilty entered on 3 counts. Motions to be filed by July 9th. Govt. to respond in one week.
	GUILLETTE - over to July 9th to obtain counsel.(Clarie,J.)m6/27/73
6/29	The following motions were filed by each defendant, Marrapese and Zinni:
	1. Motion Of the Defendant To Take A Poll,
	2. Motion To Be Furnished With Evidence Favorable to the Accused,
	3. Defendant's Motion to be Furnished With Names and Addresses of Upited States Witnesses,
	4. Motion of the Defendant To Be Furnished With Copies of the Autopsy Report,
	5. Motion For List of Names and Addresses of Witnesses Who Were summonsed To Testify Before the Grand Jury,
	6. Motion of the Defendant For Inspection of Grand Jury Minutes,
	7. Motion To Dismiss For Prejudicial Publicity,
	8. Motion of the Defendant To Be Furnished With Statements of Promises, Rewards or Inducements,
	9. Motion of the Defendant For the Production of Police Department Reports,
	10. Motion To Dismiss,
	11. Defendant's Motion For Severance,
	12. Defendant's Motion To Be Furnished With Criminal Records and Probation Records.
	13. Motion To Inspect Exhibits Presented to the Grand Jury,
	14. Motion of the Defendant To Inspect Evidence,
	15. Motion For Copy of Statements,
	16. Motion To Inspect Statements of United States Witnesses,
	17. Motion of the Defendant To Be Furnished With All Records of Electronic Surveillance and Eavesdropping,
	18. Motion To Be Furnished With Statements Concerning Identification,
	19. Motion To Inspect Photographs,
	20. Motion For A Change of Venue,
	21. Motion For Discovery and Inspection,
	22. Motion For Bill of Particulars,
	23. Motion To Dismiss Indictment
	24. Motion To Dismiss (Counts I, II, and III.
/29	Appearance of John A. O'Neill, Jr., entered and filed to represent the defendant, Nicholas Zinni.
7/9	Defendants claim indigency (Guillette and Joost). Court to appoint counsel. Same bond to continue.(Clarie,J.)m-7/10/73
/28	Magistrate's Papers, filed.....JOOST-Record of Proceedings in Criminal Cases, and copies of Warrant for Arrest of Defendant and Magistrate's Temporary Commitment.
	Magistrate's Papers, filed.....GUILLETTE - Record of Proceedings in Criminal Cases, and copies of Warrant for Arrest of Defendant and Magistrate's Temporary Commitment.

CONTINUED

BEST COPY AVAILABLE

DATE 1973	PROCEEDINGS
6/28	Magistrate's papers, filed....ZINNI-Record of Prodeedings in Criminal Cases, and copies of Warrant for Arrest of Defendant and Magistrate's Temporary Commitment.
	Magistrate's papers, filed....MARRAPESE - Record of Proceedings in Criminal Cases, and copies of Warrant for Arrest of Defendant and Magistrate' Temporary Commitment.
6/25	Appearance of Andrew A. Bucci entered and filed to represent Defendant Marrapese.
7/9	CJA 23, Financial Affidavits filed by Defendants Joost and Guillette.
7/10	CJA 21 executed (Clarie,J.) authorizing Transcript by Sperber,R.
7/11	CJA 21 executed (Clarie,J.) authorizing payment of $37.99 for transcript by Sperber, R. mailed to A.O. for payment.
7/11	CJA 20 executed (Clarie,J.) appointing James A. Wade to represent Deft. Joost.
7/12	Deft. Guillette's Motion To Reduce Bail, filed.
7/18	Government's Response To Defendant Marrapese's Motion For Discovery and Inspection, and Government's Response To Defendant Marrapese's Motion For A Bill of Particulars, filed.
7/17	Hearing on Appl. to Reduce Bond - 2 Deft's witnesses, sworn and testified - Atty. Wade to file motions in writing by Friday - Attys. Wade and Santos to file motions by Aug. 1st. and Govt. to respond within two weeks. (Clarie,J.)m-7/18/73 (Defts, Joost & Guillette)
7/18	Affidavit in Support of Defendant Guillette's Motion To Reduce Bail, filed.
7/19	Motion of Defendant, Robert Joost, To Reduce Bail, Filed.
7/19	Defendant Guillette's Requested Finding of Facts in Connection with his Motion To Reduce Bond and Affidavit of Defendant In Support of Motion For Reduction of Bail, filed.
7/20	Govt's. Requested Finding of Facts, filed.
7/20	Defendant, Joost's Requested Finding of Facts Re Motion To Reduce Bail, filed.
7/23	Hearing on 25 calendar motions: #1 - Hearing already heard - Decision reserved. #2 & 21 - To be withdrawn #8, 11, 16, 19 & 25 - Withdrawn #4 & 6 - Denied #3 & 5 - Granted #14,15,17,18,20,22,23,24 - Decision Reserved #7 - Transcript will be available at time of trial #9, 10 & 13 - to be furnished at time of trial #12 - to be held in obeyance, (Clarie, J.) m-7/24/73
7/24	Motions to Waive Jury Trial, filed by Defts. Marrapese and Zinni, in open court. (Clarie,J.)m-7/24/73
	Ruling on Motions of David Guillette and Robert Joost to Reduce Bail, filed. (Clarie,J.)m- 7/27/73 "said bonds as originally ordered in each case shall remain in full force and effect." Copies disbursed to counsel or record.
7/25	Response of United States To Defendants William Marrapese and Nicholas Zinni's Motion To Dismiss, filed.
7/25	Court Reporter's transcript of excerpt of proceedings on June 14, 1973, filed (Sperber,R.) and ORDERED SEALED (Clarie,J.)
7/26	Notice of Appeal (on Ruling of 7/24/73), filed, for Deft. Guillette. Copies sent to all counsel of record.

CONTINUED

USA vs David Guillette et als. Criminal H-524

DATE 1973	PROCEEDINGS
7/27	Certified copy of Notice of Appeal and Docket Entries mailed to Clerk, USCA.
7/	Court Reporter's transcript of proceedings held on July 17, 1973, filed in Hartford. (Sperber,R.)
7/30	Memorandum in Support of Defendants Zinni & Marranese's Motion to Dismiss, filed.
7/30	Deft. Guillette's Motion To Dismiss Count 1, filed, along with Memorandum in Support of Motion To Dismiss Count 1.
8/2	Notice of Appeal (on Ruling of 7/24/73), filed for Deft. Joost. Copies sent to counsel of record.
8/3	Certified copy of notice of appeal and docket entries mailed to Clerk, USCA.
8/1	The following motions filed by Deft. Joost: 1. Motion To Take A Poll 2. Motion To Be Furnished With Evidence Favorable to this Accused 3. Motion To Furnished With Names and Addresses of United States Witnesses 4. Motion To Be Furnished With Copies of the Autopsy Report. 5. Motion For List of Names and Addresses of Witnesses Who Were Summonsed To Testify Before the Grand Jury 6. Motion For Inspection of Grand Jury Minutes 7. Motion To Dismiss For Prejudicial Publicity 8. Motion To Be Furnished With Statements of Promises, Rewards or Inducements 9. Motion For The Production of Police Department Reports 10. Motion To Dismiss 11. Motion For Severance 12. Motion To Be Furnished With Criminal Records and Probation Records 13. Motion To Inspect Exhibits Presented To The Grand Jury 14. Motion To Inspect Evidence 15. Motion For Copy of Statements 16. Motion To Inspect Statements of United States Witnesses 17. Motion To Be Furnished With All Records of Electronic Surveillance and Eavesdropping 18. Motion To Be Furnished With Statements Concerning Identification 19. Motion To Inspect Photographs 20. Motion For Change of Venue 21. Motion For Discovery and Inspection 22. Motion For Bill of Particulars 23. Motion To Dismiss Indictment 24. Motion To Dismiss (Counts I, II & III)
8/1	Court Reporter's Notes of Proceedings held on July 17, 1973, filed in Hartford. (Sperber, R.)
8/1	Court Reporter's Notes of Proceedings held on June 25, 1973, filed in Hartford. (Sperber, R.)
8/1	Court Reporter's Notes of Proceedings held on June 18, 1973, filed in Hartford. (Sperber, R.)
8/1	Court Reporter's Notes of Proceedings held on July 23, 1973, filed in Hartford. (Sperber, R.)
7/26	CJA 21 executed (Clarie,J.) authorizing transcript to be prepared by Sperber,R.
7/	CJA 21 executed (Clarie,J.) authorizing transcript fee of $94.00 to be paid to Elliott Sperber, Court Reporter.
7/31	Acknowledgement from USCA, filed for documents mailed 7/27/73.

CONTINUED

73	PROCEEDINGS
8/3	The following motions filed by Deft. Guillette: 1. Motion For Relief From Prejudicial Joinder of Defendants 2. Motion ForBill of Particulars 3. Motion By Defendant For Production at Trial 4. Motion Requiring Special Attorney Coffey To Inspect and Examine Other Investigatory Files and Personnel 5. Motion For Change of Venue 6. Motion To Dismiss Count I 7. Motion To Dismiss 8. Motion By Defendant Guillette Joining in The Motions of Co-Defendants 9. Motion By Defendant Guillette For Discovery and Inspection 10. Motion Regarding Daniel LaPolla 11. Motion Regarding Grand Jury Proceedings
8/6	The following endorsements entered on Deft. Zinni's Motions: 1. Motion Of The Defendant To Take a Poll, "July 23, 1973 Motion of the Defendant Zinni to take a poll is withdrawn in open court. So ordered."(Clarie,J.)m-8/10/73 2. Motion To Be Furnished with Evidence Favorable To The Accused, "July 23, 1973 The Defendant Zinni's motion to be furnished with evidence favorable to the accused through the conclusion of trial was agreed to by counsel for the government, provided the obligation was limited to the requests of Brady v Maryland (373 US 83, 1962), and it was so mutually agreed; so ordered."(Clarie,J.)m-8/10/73 3. Defendant's Motion To BeFurnished With Names and Addresses of United States Witnesses, "July 23, 1973 Motion Denied. So ordered." (Clarie,J.)m-8/10/73 4. Motion of the Defendant To Be Furnished With Copies of the Autopsy Report, "July 23, 1973 Motion Granted, absent objection."(Clarie,J)m-8/10/ 5. Motion For List of Names and Addresses of Witnesses Who Were Summonsed to Testify Before The Grand Jury, "July 23, 1973 Motion Denied; so ordered."(Clarie,J.)m-8/10/73 6. Motion of the Defendant For Inspection of Grand Jury Minutes, "July 23, 1973 Motion to inspect grand jury minutes is denies; so ordered. It was agreed by counsel that withesses' testimony would be available at 9: A.M. on date testimony was to be offered at trial." (Clarie,J.)m-8/10/73 7. Motion To Dismiss For Prejudicial Publicity, "July 23, 1973 Motion denied; so ordered."(Clarie,J.)m-8/10/73 8. Motion of the Defendant To Be Furnished With Statements of Promises, Rewards of Inducements, "July 23, 1973 Motion denied; except that it was agreed by counsel that at 9: A.M. on the date such witness would be called at trial, this information would be furnished the defendant's counsel; so ordered."(Clarie,J.)m-8/10/73 9. Motion of the Defendant For The Production of Police Department Reports, "July 23, 1973 The motion is denied; except that the government will have available all relevant police reports for review by counsel at 9: A.M. on the day such evidence is to be used at trial; so ordered."(Clarie,J.)m-8/10/73 10. Motion To Dismiss, "July 31, 1973 Motion denied; so ordered." (Clarie,J.)m-8/10/73 11. Defendant's Motion For Severance, "July 23, 1973 The Court's Ruling on the severance motion is held in abeyance, until the time of trial; so ordered."(Clarie,J.)m-8/10/73

USA vs David Guillette, etals.

DATE 1973	PROCEEDINGS	Criminal H-524

8/6 dont'd...Probation Records, "July 23, 1973 The motion is denied; except that the government shall furnish the criminal records of prospective government witnesses at 9: A.M. on the day such witnesses testimony is to be offered at trial; so ordered."(Clarie,J.)m-8/10/73

13. Motion To Inspect Exhibits Presented to the Grand Jury,"July 23, 1973 Motion denied."(Clarie,J.)m-8/10/73

14. Motion of the Defendant To Inspect Evidence,"July 23, 1973 The motion is denied; except that the government shall make available to the defendant any pieces of evidence, on which the government has performed scientific tests or experiments, which evidence will be offered at trial, it shall be made available at the office of the U. S. District Atty. at Hartford at a time mutually agreeable to counsel; so ordered.(Clarie,J)m

15. Motion For Copy of Statements, "July 23, 1973 The motion is granted, as to any statement, oral or written, of the defendant, which the government will rely on or introduce at the trial; so ordered."(Clarie,J)

16. Motion To Inspect Statements of United States Witnesses, "July 23, 1973 Motion denied."(Clarie,J.)m-8/10/73

17. Motion of the Defendant To Be Furnished With All Records of Electronic Surveillance and Eavesdropping, "July 23, 1973 Motion granted, if any exist. This order shall be a continuing obligation through trial; so ordered."(Clarie,J.)m-8/10/73

18. Motion To Be Furnished With Statements Concerning Identification, "July 23, 1973 This motion was withdrawn at the hearing on said motion." (Clarie,J.)m-8/10/73

19. Motion To Inspect Photographs, "July 23, 1973 Motion Denied."(Clarie,J.)m-8/10/73

20. Motion For Change of Venue, "July 23, 1973 Motion For Change of venue was withdrawn in open court at the time of the hearing on the motion."(Clarie,J.)m-8/10/73

21. Motion For Bill of Particulars, "July 23, 1973

(1) The government agreed to furnish the defendant ZINNI the material sought in paragraph #10, only as to materials seized from him and not the other defendants.

(2) Paragraphs #4,5,6,7,11 and 12 are denied.

(3) Paragraphs #1,2,3 and 8 are not available, because they do not exist.

(4) Paragraphs #9,13,14,15,16,17, and 18 were withdrawn."(Clarie,J.)m8

22. Motion To Dismiss Indictment, "July 31, 1973 Motion of defendant Zinni to dismiss the indictment is denied; so ordered."(Clarie,J)m8/10/73

23. Motion to Dismiss, "July 31, 1973 The motion of the defendant Zinni to dismiss the indictment is denied; so ordered."(Clarie,J.)m 8/10/73

24. Motion For Discovery and Inspection, "July 23, 1973

(1) Paragraphs #1,2,4,18 and 19 (limited to Brady v Maryland) are granted.

(2) Paragraphs #3,5,6,7,8,10,11, and 17 are denied.

(3) As to paragraphs #12,13,14,15, and 16, the govt. reports there are none.

(4) Paragraph #9 shall be provided at 9: A.M. on the date of trial, when the witnesses testimony will be offered; so ordered.(Clarie,J.)m-8/10/

8/6 The following endorsements entered on Deft. Marrapese's Motions

1. Motion To Dismiss, "July 31, 1973 The motion of the defendant Marrapese to dismiss the indictment is denied; so ordered."(Clarie,J.)m8

2. Motion To Dismiss the Indictment, "July 31, 1973 Motion of the defendant Marrapese to dismiss the indictment is denied; so ordered."(Clarie,J.)m8/

3. Motion To Dismiss, "July 31, 1973 Motion of the defendant Marrapese to dismiss the indictment is denied, so ordered."(Clarie,J.)m8/10/73

cont'd...

DATE 1973	PROCEEDINGS

8/6 cont'd. 4. Motion For Discovery and Inspection, "July 23, 1973 (1) Paragraphs 1,2,4,18 and 19 (limited by Bridy v Maryland) are granted. (2) Paragraphs #3,5,6,7,8,10,11 and 17 are denied. (3) On Paragraphs #12,13,14,15 and 16, the government reports there are none; (4) Paragraph #9 shall be provided at 9: AM on the date of trial when the witnesses testimony is to be offered. So ordered."(Clarie,J) m-8/10/73

5. Motion For Bill of Particulars, "July 23, 1973 - (1) Govt. counsel agreed to provide re: defendants Zinni and Marrapese in paragraph #10; not other (2) def. materials seized from them, if any. (2) Paragraphs #4,5,6,7,11 and 12 are denied. (3) Paragraphs #1,2,3, and 8 are not available (do not exist). (4) Paragraphs #9,13,14,15,16,17 and 18 were withdrawn.(Clarie,J) m-8/10/73

6. Motion For Change of Venue, "July 23, 1973 Motion for change of venue was withdrawn in open court at the time of the hearing on the motion."(Clarie,J.)m-8/10/73

7. Motion To Inspect Photographs, "July 23, 1973 Motion Denied." (Clarie,J.)m-8/10/73

8. Motion To BeFurnished With Statements Concerning Identification, "July 23, 1973 The motion was withdrawn in open court, at the hearing on the motion."(Clarie,J.)m-8/10/73

9. Motion of the Defendant To Be Furnished With All Records of Electronic Surveillance and Eavesdropping, "July 23, 1973 Motion granted, if any exist. This order shall constitute a continuing obligation through trial; so ordered."(Clarie,J.)m-8/10/73

10. Motion To Inspect Statements of United States Witnesses, "July 23, 1973. Motion denied."(Clarie,J.)m-8/10/73

11. Motion For Copy of Statements, "July 23, 1973 The motion is granted as to any statement oral or written of the defendant, which the government will rely on or introduce at the trial; so ordered.(Clarie, m-8/10/73

12. Motion of the Defendant To Inspect Evidence, "July 23, 1973 The motion is denied; except that the government shall make available to the defendant any pieces of evidence, on which the government has performed scientific tests or experiments, which evidence will be offered at trial; it shall be made available at the office of the U.S. District Atty. at Hartford at a time mutually agreeable to counsel. So ordered."(Clarie,J.)m=8/10/73

13. Motion To Inspect Exhibits Presented to the Grand Jury, "July 23, 1973 Motion denied."(Clarie,J.)m-8/10/73

14. Defendant's Motion To Be Furnished With Criminal Records and Probation Records, "July 23, 1973 The motion is denied; except that the government shall furnish the criminal records of prospective government witnesses at 9: AM on the day such witnesses' testimony is to be offered. So ordered."(Clarie,J.)m-8/10/73

15. Defendant's Motion For Severance, "July 23, 1973 The court's ruling on the severance motion is held in abeyance, until the time of trial; so ordered." (Clarie,J.)m-8/10/73

16. Motion of the Defendant For The Production of Police Department Reports, "July 23, 1973 The motion is denied; except that the government will have all relevent reports of police available for review at 9: AM on day of trial, when such evidence will be used; so ordered." (Clarie,J.)m-8/10/73

17. Motion of the Deft. to be Furnished With Statements of Promises,

Continued

DATE 1973	PROCEEDINGS
8/6	cont'd... Rewards of Inducements, "July 23, 1973 Motion denied; except that it was agreed by counsel, that at 9: AM on the date such witness would be called at trial, this information would be furnished the defendant's counsel; so ordered."(Clarie,J.)m-8/10/73
	18. Motion To Dismiss For Prejudicial Publicity, "July 23, 1973 Motion denied; so ordered."(Clarie,J.)m-8/10/73
	19. Motion of the Defendant For Inspection of Grand Jury Minutes, "July 23, 1973 Motion to inspect grand jury minutes is denied; so ordered. It was agreed by counsel that witnesses' testimony would be available at 9: AM on date testimony was to be offered at trial."(Clarie,
	20. Motion For List of Names and Addresses of Witnesses Who Were Summonse to Testify Before the Grand Jury, "July 23, 1973 Defendant Marrapese's motion for list of witnesses who testified before the grand jury is denied; so ordered."(Clarie,J.)m-8/10/73
	21. Motion of the Defendant to be Furnished With Copies of the Autopsy Report, "July 23, 1973 Motion granted, absent objection."(Clarie,J.)m-8/
	22. Defendant's Motion to be Furnished with Names and Addresses of United States Witnesses, "July 23, 1973 Defendant Marrapese's motion to be furnished with the names and addresses of government witnesses is denied; so ordered."(Clarie,J.)m-8/10/73
	23. Motion of the Defendant To Take A Poll, "July 23, 1973 Motion of the Defendant Marrapese to take a poll is withdrawn in open court; so ordered."(Clarie,J.)m-8/10/73
	24. Motion To BeFurnished With Evidence Favorable to the Accused, "July 23, 1973 The Defendant Marrapese's motion to be furnished with evidence favorable to the accused through the conclusion of trial was agreed to by counsel for the government, provided the obligation was limited to the requirements of Brady v Maryland (373 US 83 (1962) and it was so mutually agreed; so ordered."(Clarie,J.)m-8/10/73
	25. Motion to Waive Jury Trial, "July 23, 1973 Court action held in abeyance, until just prior to trial, when the motion may be renewed; so ordered."(Clarie,J.)m-8/10/73
8/6	Endorsement entered on Deft. Zinni's Motion To Waive Jury Trial, "July 23, 1973 Court action held in abeyance, until just prior to trial, when the motion may be renewed; so ordered."(Clarie,J.)m8/10/73
	Copies of all endorsements filed on 8/6/73 sent to all counsel of record.
8/10	Acknowledgement from USCA for documents mailed on 8/3/73. filed.
8/10	ORDER from USCA denying reduction of bail re Appellants, David Guillette and Robert Joost, filed.(Mulligan & Timbers, Js.)
8/14	Motion of Deft. Guillette To Dismiss Because of Grand Jury Proceedings, filed.
8/14	Record on Appeal for Notices filed 7/26 and 8/2/73 not forwarded, as USCA has already acted on appeal (see entry of 8/10/73). Verified by Attys. Santos and Wade per phone conversations this date.
8/20	Government's Response to Defendant Joost's Motion For a Bill of Particulars and Government's Response to Defendant Joost's Motion for Discovery and Inspection, filed.
8/20	Government's Response to Defendant Guillette's Motion for Discovery and Inspection, and Government's Response to Defendant Guillette's Motion for a Bill of Particulars, filed.
8/21	Memorandum In Support of Defendant Zinni's and Defendant Marrapese' Motion to Dismiss, filed.

CONTINUED

DATE 1973	PROCEEDINGS
8/16	Court Reporter's Sound Recording of Proceedings held on June 25, 1973, filed in Hartford. (Sperber, R.)
* 8	Motion of United States for Discovery and Inspection Under Rule 16(c), Federal Rules of Criminal Procedure, Filed.
8/30	Defendant's Motion to Suppress and for Return of Certain Property, filed. (Def. Guillette).
8/31	Motion for Production of Samples and Copies of Evidence for the Purpose of Conducting Scientific Tests, and Motion For Individual Examination of Prospective Jurors and For Additional Peremptory Challenges, Filed. (Def. Guillette).
9/7	(Joost) Motion For Forthwith Order Producing Incarcerated Defendant Before The Court, Motion For Defendant To Be Present At Co-Defendant's Suppression Hearings and Motion for Rehearing on Bail, filed.
9/13	(Guillette) Motion To Suppress Testimony of John Housan and John Daniels along with Affidavit and Memorandum in Support of Motion to Suppress Testimony of John Housan and John Daniels, filed.
9/14	(Govt's.) Response To Motion To Dismiss Count I, filed.
9/10	Guillette Motions Hearing - Calendar Motions, #1 & 8 denied - #15 Denied without prejudice - to be renewed -- #4,5,6,7,10,11,12, 14 & 16 Decision Reserved - #2 & 9 Government to comply - #16 set for 9/18/73 at 10:00am, #3 granted, -- Joost Motions over to Friday at 10:00am. All counsel to receive copy of calendar on this hearing. (Clarie,J.)m-9/11/73
9/14	Atty Wade files following motions for Robert Joost - Motion For Relief from Prejudicial Joinder of Defendants, Motion To Dismiss Count #1, (two separate motions) Motion Requiring Special Atty. Coffey to Inspect and examine other Investigatory files and personnel, Motion by Defendant, Robert Joost for Production at Trial, Motion of Robert Joost For Bill of Particulars, Motion To Dismiss, Motion of Defendant Robert Joost regarding Grand Jury Proceedings, Motion by Defendant Robert Joost for Discovery and Inspection. Hearing on Motion to take a Poll, Decision Reserved. 2. Motion to be furnished with names and addresses of the US Witnesses, Decision reserved. 3. Motion to be furnished with Evidence favorable to this accused, Decision reserved, 4. Motion to be furnished with copies of Autopsy Report, Government agrees. 5. Motion for list of names and addresses of witnesses who were summoned to testify before Grand Jury, Decision Reserved. 6. Motion For Inspection of Grand Jury minutes, Decision Reserved. 7. Motion To Dismiss for Prejudicial Publicity, Decision Reserved. 8. Motion To Be furnished with Statements of Promises, Rewards or Inducements, Decision Reserved 9. Motion for Production of Police Dept. Reports, Decision Reserved. 10. Motion To Dismiss, Decision reserved 11. Motion For Severance, Decision Reserved. 12. Motion to be furnished with Criminal Records & Probation Reports, Government to comply on Criminal Record - Defendant not entitled to Probation Reports.

Continued

DATE 1973	PROCEEDINGS
9/14	contd...13. Motion To Inspect Exhibits presented to the Grand Jury, Decision Reserved.
	14. Motion To Inspect Evidence, Government to comply.
	15. Motion For Copy of Statements, Decision Reserved - Govt. to comply.
	16. Motion to Inspect Statements of US Witnesses, Decision Reserved.
	17. Motion To be furnished with all records of electronic surveillance and eavesdropping, Govt. to comply.
	18. Motion to be furnished with Statements concerning identification, Decision Reserved.
	19. Motion To Inspect Photographs, Decision reserved.
	20. Motion for Change of Venue, Decision Reserved.
	21. Motion For Discovery and Inspection, Decision reserved.
	22. Motion for Bill of Particulars, Decision Reserved.
	23. Motion to Dismiss Indictment, Decision Reserved.
	24. Motion To Dismiss Counts 1,2&3, 3, Decision reserved.
	25. Motion To Suppress Evidence of Housan & Daniels, Decision Reserved. (Clarie,J.)m-9/17/73
9/19	Defendants Marranese and Zinni's Motion To Dismiss, filed.
9/24	Guillette calendar motion, over to no date certain, (Clarie,J.)m9/25
9/21	Hearing - Atty Santos moves to sequester all Govt. witnesses - Atty Coffey moves to sequester all witnesses - Motion Granted - 2 Defendant's witnesses, sworn and testified - Deft. exh.. A,B,C,D, E-1 thru E-4 & F, filed - Govt. exh 1 & 2, filed - 1 Govt. Witness, sworn and testified - 1 Deft. witness recalled and testified. Court adjourned at 5:02pm.(Clarie,J.)m-9/24/73
9/21	Copy of letter from Ernest J. Gervais to Hubert Santos, Esq, dated 9/20/73, filed.
9/24	Brief of United States in Support of Proof At Trial of a Prior Similar Act, filed.
9/26	Continued Suppression Hearing - Defendant's exhibits G,H, & I, filed. 4 Defendant's Witnesses sworn and testified. Briefs to be filed by October 3rd.(Clarie,J.)m-9/27/73
9/27	Copy of letter from Hubert J. Santos, Esq. to Paul Coffey, Esq. dated 9/27/73, filed.
9/28	CJA 21 executed (Clarie,J.) authorizing Suppression Hearing transcript to be prepared by Sperber,R.
9/28	Endorsements entered on the following motions:
	1. Joost's Motion ForRelief From Prejudicial Joinder of Defendants, "The motion of the defendant-Joost to grant a severance and order a separate trial for him is denied, without prejudice to its being renewed prior to the commencement of trial for good cause and a change of circumstances. SO ORDERED."(Clarie,J.)m-10/3/73
	2. Joost's Motion For Production At Trial, "The defendant-Joost's motion for the production at trial of all material required under 18 USC §3500 is granted. So ordered."(Clarie,J.)m-10/3/73
	3. Joost's Motion Requiring Special Attorney Coffey to Inspect and Examine Other Investigatory Files and Personnel, "That part of the defendant-Joost's motion requiring the Government prosecutor to examine all available federal law enforcement files, when complying with the defendant-Joost's pre-trial motions is granted; the remainder of said motion relating to local and state enforcement files is denied. It is understood that the Government will promptly provide 'Brady material' to defense counsel on all relevant factual material known to the Government, which might be exculpatory. SO ORDERED."(Clarie,J.)m-10/3/73

CONTINUED ON PAGE 6

DATE 1973	PROCEEDINGS

9/28contd. 4. Joost's Motion To Dismiss Count I - "The defendant-Joost's motion to dismiss Count 1, on the grounds that 18 U.S.C. §241 as it applies to him is unconstitutional, because it imposes a penalty disproportionate to what the Government must prove for a conviction and it is vague and indefinite and denies him due process of law is denied. So ordered."(Clarie,J.)m-10/3/73

5. Motion of Defendant, Robert Joost, Regarding Grand Jury Proceedings, "The defendant-Joost's motion regarding Grand Jury proceedings is granted, except that Paragraphs 3,5, 6(a) 7 and 8, are denied. SO ORDERED."(Clarie,J.)m-10/3/73

6. Joost's Motion To Dismiss, The defendant-Joost's motion to dismiss the indictment on the grounds that the testimony presented to the Grand Jury was hearsay in violation of the Estepa doctrine is denied; so ordered."(Clarie,J.)m-10/3/73

7. Joost's Motion To Dismiss Count I, "The defendant-Joost's motion to dismiss on the grounds that this Court does not have jurisdiction over the matter alleged is denied. SO ORDERED."(Clarie,J.)m-10/3/

8. Guillette's Motion For Relief From Prejudicial Joinder of Defendants, "The defendant-Guillette's motion for relief from prejudicial joinder is denied without prejudice to its being renewed at the commencement of trial. So ordered."(Clarie,J.)m-10/3/73

9. Guillette's Motion Requiring Special Attorney Coffey to Inspect and Examine Other Investigatory Files and Personnel, "The motion of the defendant Guillette to require the Special Government Attorney to inspect and examine the investigatory files of the state and local law enforcement officials is denied. So ordered."(Clarie,J.)m-10/3/73

10. Guillette's Motion By Defendant For Production At Trial, "The motion of the defendant-guillette for production at trial is granted by consent. SO ORDERED."(Clarie,J.)m-10/3/73

11. Guillette's Motion Regarding Daniel LaPolla, "Paragraphs 1, 2(c), 4,5,6,7,11,13,14,16,18, and 21 are granted; Paragraphs 2(a), 2(b), 2(d), 2(e), 3, 7(a), 8,9,10,12,15,17(a) and (b), 19, and 20 are denied. SO ORDERED." (Clarie,J.)m-10/3/73

12. GUILLETTE'S Motion Regarding Grand Jury Proceedings, "Paragraphs 1,2,4,6(b) and 9 are granted; Paragraphs 3,5,6(a), 7, and 8 are denied; so ordered."(Clarie,J.)m-10/3/73

13. GUILLETTE'S Motion To Dismiss, "The motion of the defendant-Guillette to dismiss the indictment on the grounds that the testimony presented to the Grand Jury consisted of hearsay in violation of the Estepa rule is denied; so ordered."(Clarie,J.)m-10/3/73

14. Guillette's Motion To Dismiss Because of Grand Jury Proceedings, "The defendant-Guillette's motion to dismiss theindictment, because the same Grand Jury previously returned an indictment on May 3, 1972, against the same defendant in criminal case No. H-264 is denied; so ordered."(Clarie,J.)m-10/3/73

15. Guillette's Motion For Individual Examination of Prospective Jurors and For Additional Peremptory Challenges, " Motion denied without prejudice to its being renewed at commencement of trial. So ordered."(Clarie,J.)m-10/3/73

16. Guillette's Motion to Dismiss Count 1, "The defendant-Guillette's motion to dismiss Count 1 is denied; so ordered."(Clarie,J)m10/3/73

17. GUILLETTE'S Motion forChange of Venue, "The defendant-Guillette's motion for change of venue from the District of Connecticut is denied. So ordered."(Clarie,J.)m-10/3/73

DATE	PROCEEDINGS
9/28	1. RULING ON MOTION OF DEFENDANT ROBERT JOOST FOR DISCOVERY AND INSPECTION, filed. (Clarie,J.)m-10/3/73 Denied in part and Granted in part.
	2. RULING ON MOTIONS OF DEFENDANTS, ROBERT JOOST AND DAVID GUILLETTE, FOR BILL OF PARTICULARS, filed. (Clarie,J.)m-10/3/73 Denied in part and Withdrawn in part.
	3. RULING ON MOTION OF DEFENDANTDAVID GUILLETTE FOR DISCOVERY AND INSPECTION,filed. (Clarie,J.)m-10/3/73 Denied, Granted, Agreed to and withdrawn in part.
	4. RULING ON MOTION OF DEFENDANT DAVID GUILLETTE FOR PRODUCTION OF SAMPLES & COPIES OF EVIDENCE FOR THE PURPOSE OF CONDUCTING SCIENTIFIC TESTS, filed. (Clarie,J.)m-10/3/73 Granted in part and to be made available for examination and inspection at the office of the US Atty., at time and place mutually convenient. In part.
	5. RULING ON MOTION OF UNITED STATES FOR DISCOVERY AND INSPECTION UNDER RULE 16(c), FED. R. CRIM. P., filed. (Clarie,J.)m-10/3/73 Granted with exception. copies of all endorsements and rulings mailed to all counsel of record.
10/2	GUILLETTE - Motion For Samples of Black Electrical Tape, Motion for Sample of Wire and Insulation From Noblemet Battery, Motion For Permission to Subpoena and Examine Grand Jurors as to Bias Or Prejudice, and Motion For Copy of Defendant Guillette's Criminal Record, filed.
10/3	ENDORSEMENTS ENTERED ON THE FOLLOWING MOTIONS:
	1. Motion to Take A Poll, "Defendant-Joost's motion to poll the question of prejudicial publicity in the area from which jurors would be drawn for trial is denied. So ordered."(Clarie,J.)m-10/10/73
	2. Motion to Be furnished With Evidence Favorable to This Accused, "Defendant-Joost's motion to be furnished evidence favorable to the accused is granted, within the limitation prescribed by Brady v. Maryland. So Ordered."(Clarie,J.)m-10/10/73
	3. Motion To Be Furnised With Names andAddresses of United States Witnesses, "Defendant-Joost's motion to furnish the names and addresses of Government witnesses to be called at trial is denied. So Ordered." (Clarie,J.)m-10/10/73
	4. Motion To BeFurnished With Copies of the Autopsy Report, "Defendant-Joost's motion to be furnished with a copy of the Daniel LaPolla autopsy report is granted. So ordered."(Clarie,J.)m-10/10/73
	5. Motion For List of Names and Addresses of Witnesses Who Were Summonsed To Testify Before the Grand Jury,"The motion of the defendant-Joost for a list of names and addresses of witness, who were summoned to testify before the Grand Jury is denied. So ordered."(Clarie,J.)m10/1
	6. Motion ForInspection of Grand Jury Minutes, "Defendant-Joost's motion for an inspection of the Grand Jury minutes is denied; however, the Government will have said minutes transcribed and available at trial for the purposes of the Jencks Act. So Ordered."(Clarie,J.)m-10/10/73
	7. MOTION To Dismiss For Prejudicial Publicity, "The defendant-Joost's motion to dismiss for reasons of prejudicial publicity is denied. So ordered."(Clarie,J.)m-10/10/73
	8. Motion To Be Furnished With Statements of Promises, Rewards or Inducements, "The Government shall furnish forthwith to the defendant-Joost all information known to it, involving promises, inducements, or rewards of any kind made by the Government to any witness or witnesses, whom it intends to call as witnesses in support of the averments in the indictment. So ordered."(Clarie,J.)m-10/10/73

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DATE 1973	PROCEEDINGS
10/3	Endorsements continued:
	9. Motion For The Production of Police Department Reports, "The defendant'Joost's motion for a copy of all police department reports concerning matters referred to in the indictment is denied. So ordered."(Clarie,J.)m-10/10/73
	10. Motion To Dismiss, "The motion of the defendant-Joost to dismiss the indictment, for the reasons therein alleged, is denied. So Ordered. (Clarie,J.)m-10/10/73
	11. Motion ForSeverance, "The motion for a severance and trial of his case separately by the defendant-Joost is denied. So ordered." (Clarie,J.)m-10/10/73
	12. Motion To Be Furnished With Criminal Records and Probation Records, "The defendant-Joost's motion requesting that the Government furnish his attorney with a list of witnesses on which the Government intends to rely is denied. However, the Government shall furnish the defendant-Joost with the criminal records of all witnesses who shall testify, prior to their cross-examination at trial; this shall not include their probation records, if any. So ordered."(Clarie,J.)m-10/10/73
	13. Motion To Inspect Exhibits Presented To The Grand Jury, "The defendant-Joost's motion to inspect exhibits presented to the Grand Jury, which returned the indictment, is granted. They shall be made available at the office of the United States District Attorney, 450 Main Street, Hartford, Connecticut, at a time mutually convenient to counsel. So ordered."(Clarie,J.)m-10/10/73
	14. Motion To Inspect Evidence, "The motion of the defendant-Joost to inspect and copy the results or reports of physical or mental examinations and of scientific tests or experiments made in connection with this case and in the custody and control of the United States is granted. Said defendant may also inspect, copy, or photograph all books, papers, documents, tangible objects, taken by Government officers from the person or premises of said defendant-Joost and which are within the possession and control of the Government. So Ordered." (Clarie,J.)m-10/10/73
	15. Motion For Copy of Statements, "The motion of the defendant-Joost requiring the Government to furnish copies of all statements, written or oral, made by the defendant-Joost in connection with the subject matter of this case, which the United States has in its possession and on which it intends to rely at the time of trial is granted. So ordered."(Clarie,J.)m-10/10/73
	16. Motion To Inspect Statements of United States Witnesses, "The defendant-Joost's motion that his counsel inspect statements of witnesses that the United States intends to call during the pendency of the trial of this case is denied. So ordered."(Clarie,J.)m-10/10/73
	17. Motion To Be Furnished With all Records of Electronic Surveillance and Eavesdropping,"The Defendant-Joost's motion to be furnished all records of electronic surveillance and eavesdropping from March 31, 1973 to date is granted, as requested in sub-paragraphs (a), (b), (c), (d) and (e); this shall include all such activity by federal agents, but not those of state police officers in Rhode Island or Connecticut, unless the action was the result of joint action or the records are in the possession or under the control of the federal government. So ordered."(Clarie,J.)m-10/10/73
	18. Motion To Be Furnised With Statements Concerning Identification, "The defendant-Joost's motion to furnish him with all statements

DATE 1973	PROCEEDINGS
0/3con	t'd.....made by all persons regarding the identification of him is denied; except as to any exculpatory information required to be filed under Brady V. Maryland. So ordered."(Clarie,J.)m-10/10/73
	19. Motion To Inspect Photographs, "The defendant-Joost's motion that he be permitted to inspect all known photographs and slides of him which were shown to any person for the purpose of making an identification of the defendant Joost himself and any of the three other defendants in connection with the subject matter of the indictment is granted; the remainder of the motion is denied. So Ordered."(Clarie,J.)m-10/10/73
	20. Motion For Change of Venue, "The defendant Joost's motion for change of venue from the District of Connecticut is denied. So Ordered." (Clarie,J.)m-10/10/73
	21. Motion To Dismiss Indictment, "The defendant Joost's motion to dismiss the indictment for the reasons therein claimed, is denied. So ordered."(Clarie,J.)m-10/10/73
10/5	Defendant Marrapese's Motion For Exculpating Evidence, filed.
	DAVID GUILLETTE- Motion To Inspect Door Fragments; Motion For Photograph of Daniel LaPolla; Motion ForClarification of Pre-Trial Order; Motion For Government to Have Available Expert Witnesses; and Motion For Brady Material, filed.
	ROBERT JOOST - Motion For Individual Examination of Prospective Jurors and For Additional Preemptory Challenges, filed.
	Brief of the United States in Opposition of Defendant's Motion to Suppress, filed.
	Brief in Support of Defendant Guillette's Motion To Suppress, file
10/9	Deft. Marrapese's Motion For Grand Jury Minutes, filed
	Motion To Withdraw Appearance on Behalf of Nicholas Zinni, filed by Atty. O'Neill.
10/9	Deft. Guillette's Motion For Samples of Black Electrical Tape, May go OFF. - Deft. Guillette's Motion For Sample of Wire and Insulation from Noblemet Battery, Govt. to comply. - Deft. Guillette's Motion For Permission to Subpoena and Examine Grand Jurors as to Bias of Prejudice, Denied. - Deft. Guillette's Motion For Copy of Defendant Guillette's Criminal Record, Granted. - Atty. Santos advised Court he had filed the following motions which were not on calendar, Motion For Govt. to have all expert witnesses available at trial, Granted absent objection. - Motion To Supply Defense with photo of Daniel Lapolla, Granted. - Motion To Inspect Door Fragments, Dec. Reserved. - Motion For Further Brady material, such as Inventory of house, Dec. Reserved.- Defendants' (Marrapese and Zinni) Motion To Dismiss, Dec. Reserved. (Clarie,J.)m10/
0/10	ENDORSEMENTS ENTERED ON FOLLOWING MOTIONS:
	1. Motion For Photograph of Daniel LaPolla, "Oct. 9, 1973 Motion Granted, so ordered."(Clarie,J.)m-10/11/73
	2. Motion To Inspect Door Fragments, "Oct. 9, 1973 Motion Granted, so ordered."(Clarie,J.)m-10/11/73
	3. Motion For Government To Have Available Expert Witnesses, "Oct. 9, 1973 Motion granted, absent objection."(Clarie,J.)m-10/11/73
	4. Motion For Brady Material, "Oct. 9, 1973 Items #1,2,4 and 5 are granted; item #3 is granted as to the list compiled and in the possessio of the government, so ordered."(Clarie,J.)m-10/11/73
	5. Motion For Clarification of Pre-trial Order, "Oct. 9th 1973 Motion agreed to in open court, that the pre-trial order did not include scientific reports not to be offered or relied upon by the defendant; nor any which might inculpate the defendant in violation of 5th

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DATE 1973	PROCEEDINGS
O[illegible] 10	contd.....Amendment Rights; so ordered."(Clarie,J.)m10/11/73
	6. Motion For Copy of Defendant Guillette's Criminal Record, "October 9, 1973 Motion granted."(Clarie,J.)m=10/11/73
	7. Motion For Permission To Subpoena and Examine Grand Jurors As To Bias or Prejudice, "October 9, 1973 Motion denied."(Clarie,J)M10/11/7
	8. Motion For Sample of Wire and Insulation From Noblemet Battery, "October 9, 1973 Counsel agreed to work out a satisfactory disclosure procedure, so that the defendant Guillette's counsel could have necessary tests made; So ordered."(Clarie,J.)m-10/11/73
	9. Motion For Samples of Black Electrical Tape, "October 9th 1973 Motion off list by agreement of counsel."(Clarie,J.)m-10/11/73
	Copies of above endorsements mailed to all counsel of record.
10/11	Copy of letter to Judge Clarie with attachments, filed by Atty. Santos.
"	CJA 21 executed (Clarie,J.) authorizing services of Dr. Henry DePhillips, Chemist.
"	CJA 21 executed (Clarie,J.) authorizing services of Robert M. Zimmers, Explosives Expert.
10/12	Motion (to be furnished with any and all information pursuant to US vs. Mele) and Supplemental Motion To Withdraw, filed by Deft. Zinni.
8/21	Copy of letter from Atty. Coffey advising that Govt. is ready to proceed to trial, inserted in file.
10/11	CJA 21 executed (Clarie,J.) authorizing payment of $57.00 to Elliott Sperber, Court Reporter for transcript.
[illegible]/15	Notice of Non-Compliance, filed by Deft. D. Guillette.
10/16	Motion For Severance of Counts; Motion To Re-Open Suppression Hearing along with Affidavit; Motion To Dismiss along with Affidavit; and Motion For Copies of Certain Business Records along with Affidavit, filed by Deft. Guillette.
10/8	Court Reporter's Notes of Proceedings held on September 14, 1973, filed in Hartford. (Sperber, R.)
10/17	Copy of Letter dated 10/17/73 to Paul Coffey, Esq. from Hubert Santos, Esq., filed.
10/18	Defendant's Motion (Nicholas Zinni) To Dismiss, filed along with Affidavit of John A. O'Neill, Jr., Esq.
10/18	Application for Writ of Habeas Corpus Ad Testificandum and Order, filed. (Clarie,J.)m-10/23/73 Two copies of Writ and two attested copies of Order handed US Marshal for service.
10/19	Defendant, David Guillette's Motion For Hearing Concerning Admissability of Noblemet Incident; Motion For Brady Material Regarding John Housand; Motion For Production of Records Taken By Law Enforcement Personnell; and Motion To Dismiss, filed.
10/19	Endorsement entered on Motion To Suppress Testimony of John Housan and Daniels, "The defendant Guillette's motion to suppress the testimony of John Housan and John Daniels is denied. SO ORDERED." (Clarie,J.)m-10/23/73 Copy sent to all counsel of record.
"	Endorsement entered on Motion To Withdraw Appearance on Behalf of Nicholas Zinni, "Oct. 19th 1973 Motion of Atty. O'Neill to withdraw is denied; so ordered."(Clarie,m-10/23/73 Copy sent to all counsel of record.
10/23	Deft. Joost's Motion For Severance of Counts and Deft. Joost's Motion To Dismiss, filed, along with Affidavit.

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USA vs David Guillette et als. Criminal H-524

DATE 1973	PROCEEDINGS
10/23	Court Reporter's transcript of proceedings held on September 21, 1973 (Vol. I), filed in Hartford. (Sperber,R.)
	Court Reporter's transcript of proceedings held on September 26, 1973 (Vol. II), filed in Hartford. (Sperber,R.)
10/19	Habeas Corpus filed on N. Zinni - Hearing on Motion To Withdraw, Motion to Withdraw, denied - Atty. O'Neill makes Motion For Severance, and advised by Court no action will be taken and Motion should be renewed at a later time - Atty. O'Neill asks Court's promission to interview Mr. Zinni as he is being held in protective custody by State authorities - Court advises Mr. Coffey, he should notify prison authorities that Mr. O'Neill may see his client - Motion of the U. S. to file in-camera statement of William Marrapese - Court adjourned at 2:47pm.(Clarie,J.)m10
10/23	Hearing on various motions - Motion For Production of Records taken by law enforcement personnel - Motion For Brady Material Concerning John Housen - Motion For Hearing Concerning the Admissibility of the Nobelmet incident - Request for Severance of Counts - Motion to Re-open Suppression Hearing - Motion To Dismiss - Motion of Atty. for Zinni that he be furnished with information pursuant to Mele - Decision Re-served on all motions. Court adjourned at $:45pm.(Clarie,J.)m=10/24/73
10/23	CJA 21 executed (Clarie,J.) authorizing Elliott Sperber, Court Reporter to prepare transcript of suppression Hearing.
10/23	Application For Writ of Habeas Corpus Ad Prosequendum and Order (Clarie,J.), filed. Order m-10/25/73
10/24	Endorsements entered on the following motions: 1. Motion For Brady Material Regarding John Housand, "The Government is under a continuing duty to timely produce Brady material throughout the trial; so ordered. In all other respects the motion is denied."(Clarie, J.)m- 10/25/73 2. Motion To Dismiss, "Defendant-Guillette's motion to dismiss the indictment on the ground that illegally seized evidence was submitted to the Grand Jury is denied. SO ORDERED."(Clarie,J.)m-10/25/73 3. Motion For Hearing Concerning Admissability of Noblemet Incident, "The defendant-Guillette's motion for a pre-trial hearing concerning the Noblemet incident is denied. So ordered."(Clarie,J.)m-10/25/73 4. Motion For Production of Records Taken By Law Enforcement Personnel, "Off by agreement, subject to being renewed for further production at trial. So ordered."(Clarie,J.)m-10/25/73 5. Motion For Severance of Counts, "Motion of defendant-Guillette for severance of counts is denied. So ordered."(Clarie,J.)m-10/25/73 6. Motion To Dismiss Count I, "The defendant Guillette's motion to dismiss Count I for the reason that this Court does not have jurisdiction over the matters alleged is denied. SO ORDERED."(Clarie,J.)m-10/25/7 7. Motion to Re-open Suppression Hearing,"Defendant-Guillette's motion to reopen suppression hearing is denied. So ordered."(Clarie,J)M 8. Motion For Copies of Certain Business Records, "Counsel agreed to provide business records requested for copying. So ordered."(Clarie,J)M 9. Motion For Severance of Counts, "Defendant-Joost's motion for the severance of counts is denied. So Ordered."(Clarie,J.)m=10/25/73 10 RULING ON MOTION OF DEFENDANT, DAVID GUILLETTE, TO SUPPRESS & FOR RETURN OF CERTAIN PROPERTY, filed. (Clarie,J.)m-10/25/73 Parts 1 and 4 are denied, Part 2 is denied with exception, and Part 3 is granted. Copies of endorsements and Ruling handed to all counsel of record when court commenced at 10:00 a.m. this date.

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DATE 1973	PROCEEDINGS
10/24	JURY TRIAL = Jury Questions filed by Atty. Santos - Request of U.S. To Defendants Motion for Disclosure of Brady Material - Request for Voir Dire Examination filed by Atty. Wade - Motion To Dismiss Counsel, filed by Deft. Joost - Deft. Joost makes oral Motion for continuance or severance - Motion To Dismiss Counsel and Appoint new Counsel, Denied - Hearing on Motion to proceed to Court Trial rather than Jury Trial- Deft. Zinni withdraws Motion, Deft. Marrapese renews Motion For Court Trial - Atty. Bucci renews Motion for Severance Defts. Marrapese and Zinni are severed from cases of Defts. Joost and Guillette - Court orders Govt. to give Marrapese statement to each counsel (Mr. Wade, Mr. O'Neill & Mr. Bucci", but not to press - Bill of Particulars filed by Govt. - Mr. Joost asks that Mr. Wade continue as counsel until tomorrow morning - Atty. Wade makes Motion To Dismiss Indictment because of Govt. failure to produce Brady material, Motion Denied - Atty. Wade moves to sever Deft. Joost from Deft. Guillette - Motion Denied -Atty. Santos moves that Court disqualifies itself on question of admissibility of the Nobelmet incident, Motion Denied - Defendants to have 6 challenges each - Jury to have 4 alternates - Jury brought into Courtroom - Voir dire oath administered - 59 Jurors respond to roll call - Jury Retires and individual Voir Dire commences - Panel of 30 drawn and individual questioning commences - Jurors already questioned on voir dire and balance of panel recalled to Courtroom and instructed about reading or listening about case. Court adjourned at 5:19pm until tomorrow at 10:00 am.(Clarie,J.)m-10/25/73
10/25	JURY TRIAL - Jury Panel Reports and Individual Voire dire continues - 12 Jurors drawn - Those not queried on Voir Dire excused along with the 12 drawn, until tomorrow at 10:00 am. Balance of panel excused until notified by Clerk's Office - Court adjourned at 5:43 pm until tomorrow at 10:00 am.(Clarie,J.)m-10/26/73
10/26	JURY TRIAL - Jury of 12 and 11 (balance of panel report and jury selection of alternates continues - Defendant Joost addresses Court and advises that Atty. Murphy will not represent him and makes oral Motion For Severance - Motion for Severance, Denied - Defendant to be represented by Atty. James Wade - 4 Alternate Jurors selected = Attys. for Defendants request that press not publish any facts not before jury and that press be ordered out of courtroom for this purpose - Attys ordered to make requests at bench - Request denied - Alternates called back into courtroom and sworn - Memorandum of Defendant in Support ob Motion To Sever - Atty Santos moves for severance on part of Deft. Guillette - Brief to be fined by Atty. Coffey by Monday - Defense moves to sequester all Govt. witnesses and Govt. wishes all Defense witnesses sequestered - Agt. Petrella and wife of Deft. Guillette and fiancee of Deft. Joost may remain in courtroom - Defense and Govt. have agreed to stipulation on certain exhibits and proceed to argue - Govt. exhibits 1,2 & 3, filed - Govt. witness sworn and testified. Court adjourned at 5:02pm until Monday at 10:00am. (Clarie,J.)m-10/29/73
10/29	Court reporter's transcript of proceedings (Argument of Counsel) held on October 26, 1973, filed in Hartford. (Sperber,R.) Copy given to Judge Clarie.
10/26	Marshal's executed returns, filed. (Writs of H.C. re Deft. Zinni)
10/26	CJA 21 executed (Clarie,J.) authorizing payment of $256.00 to Elliott Sperber, Court Reporter for transcript.
10/29	Memorandum Brief of United States In Opposition of Defendant

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DATE 1973	PROCEEDINGS
10/30	JURY TRIAL CONTINUES: One juror absent, Miss Dorothy Moore - balance of 15 report - Alternate Juror #1, Mrs. Helen Tillotson to replace Mrs. Moore - Atty. Santos asks that all statements taken by Govt. agents before Grand Jury Proceedings be revealed to Court - Court Exhibits A thru J, filed and sealed per order of Court - Motion to Sever, Denied - Atty. Coffey moves to sequester Mr. Marrapese - Denied - Govt. Witness sworn and testified - Atty. Santos states to Court the information he wishes to elicit concerning pre-indictment statements - 2 Defendant's witnesses, sworn and testified - Jury of 15 excused until tomorrow at 10:00 am - After afternoon recess, Court instructs Clerk that Jury is to be called to report at 10:00 am on Thursday. - Govt. Witness previously sworn, resumes stand and testified - Court Exhibit K, filed. Court adjourned at 5:00 pm until tomorrow at 10:00 am.(Clarie,J.)m10/31/73
10/31	JURY TRIAL CONTINUES - JURY ABSENT - Trial continues on Motions of Defendants Attorneys re invasion of Defendants camp by Govt. - Court exhibit K to be given to counsel except for Para. #1 & #2 on Page 7 - Atty. Wade makes motion for Dismissal on ground that Brady Material has not been turned over to Defendant's Counsel - Motion Denied - Atty Wade makes Motion that State Troopers make notes available to Counsel - Atty. Coffey will furnish notes to Court - 2 Witnesses previously sworn recalled to stand and testified - Court Exh. L, filed. - Court Exh L to be given to opposing counsel after deletions put on record and allowed by Court - Atty. James Wade again moves to dismiss and is joined by Atty. Santos - 3 Defendant's witnesses sworn and testified - Deft. Exh. #1, filed - Court Exh. on transcript, filed. Court adjourned at 5:00pm until tomorrow at 10:00 am.(Clarie,J.)m11/1/73
11/1	JURY TRIAL CONTINUES - JURY ABSENT - Hearing continues - Court states that Court Exhibit M shall be sealed - Atty. Santos makes oral Motion For Dismissal, Motion Denied - Witness, previously sworn, resumes stand and testified - 2 Defendant's witnesses, sworn and testified - 1 Government Witness, sworn and testified - Court Exhibits N,O & P, filed. Court adjourned at 5:02pm until tomorrow at 10:00 a.m.(Clarie,J.)m-11/2/7.
** 11/5	JURY TRIAL CONTINUES: Motion For in camera Investigation concerning information supplied to Law Enforcement personnel - Court exhibit R, filed. - Jury of 13 report - called into courtroom - Inquiry made by Court whether any jurors have been exposed to any news media or discussed case outside Corrtroom. - Jury excused until called by Clerk's Office Atty. Santos moves for mistrial, adopted by Atty. Wade, Motion Denied - Witness, previously sworn, resumes stand and testified - Deft. exhibit 7, filed - Atty. Santos moves to strike testimony of Mr. Housand, Motion Denied - Court adjourned at 5:00 pm until tomorrow at 10:00 A.M. (Clarie,J.)m-11/3/73
11/2	JURY TRIAL CONTINUES - JURY ABSENT - Hearing continues - Witness, previously sworn, resumed stand and testified - Court exhibit Q, filed and sealed - Deft's. exhibits 2 thru 6, filed and Sealed - Court adjourned at 5:04 pm until Monday at 10:00 A.m. (Clarie,J.)m-11/5/7
11/7	JURY TRIAL CONTINUES - JURY ABSENT- Hearing continues - John Housand, previously sworn, resumes stand and continues testimony - Court Exhibit S, filed. Court adjourned at 5:02pm until tomorrow at 10:00 am. (Clarie,J.)m-11/9/73
11/8	Court Reporter's transcripts (2 Vols.) of proceedings held on November 1 & 2, 1973 and Nov. 6, 1973, filed in Hartford. (Sperber,R.)
11/8	Memorandum of the United States in Opposition To Defendants' Motion For Dismissal of Indictment, filed.

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R

DATE 1973	PROCEEDINGS
11/8	Defendants' (Guillette & Joost) Findings of Facts, filed.
11/8	JURY TRIAL CONTINUES - ABSENT JURY- John Housen, previously sworn, resumes stand and continues testimony - Court Exhibits T thru W filed - Government exhibits 4 thru 28 marked for identification. (Clarie,J.)m-11/9/73
11/9	JURY TRIAL CONTINUES-ABSENT JURY- 3 Defendant's witnesses, sworn and testified - Deft's exhibits 8,9 & 10 marked for identification. Court adjourned at 4:50pm until 10:00 am Monday, 11/12/73.(Clarie,J.) m-11/12/73
11/12	Court Reporter's Transcripts (2 Vols.) of proceedings held on November 7 & 8, 1973, filed. (Sperber,R.)
11/12	Affidavit of Paul E. Coffey, filed.
11/13	CJA 21 executed authorizing Transcript of testimony of John Housand, filed. (Clarie,J.)
11/13	JURY TRIAL CONTINUES- ABSENT JURY - Agent Weronick resumes stand, previously sworn and continues testimony - Defendant's exhibits 11A thru 14, filed (#12 marked for identification) - Govt. exhibits 29,32,& 33 marked for identification - Govt. exhibits 30A,B,C; 31A&B; and 34A,B,&C, filed. 2 Govt. witnesses, sworn and testified.(Clarie,J.) m=11/14/73
11/14	Application for Writ of Habeas Corpus ad Testificandum and Order (Clarie,J.)m-11/19/73, filed. Two attested copies handed US Marshal for service.
11/15	JURY TRIAL CONTINUES- ABSENT JURY - Def. moves for all statements by Marapese to Government - Govt. will file them for in-camera inspection by Court - Witness previously sworn, resumes stand and testifies - Def. Exh. #12 now marked as full exhibit - Witness previously sworn recalled and testified - 3 Govt. Witnesses, sworn and testified - Oral motion by Defts. to strike testimony of Gervais and Erickson and objection to exhs. 26 & 27 - Motion granted as to Deft. Joost and denied as to Deft. Guillette - Deft's. exhibit #15, marked for identification - Govt. exhibits 35 thru 38 marked for identification - Defs. moved orally for disclosure of informant's name re Paul Coffey Affidavit Court to inquire of informant in-camera and seal transcript for possible use in future proceeding. Court adjourned at 5:05pm until tomorrow at 10:00 am. (Clarie,J.)m-11/16/73
11/16	JURY TRIAL CONTINUES- ABSENT JURY - Hearing continues - 6 Govt. witnesses, sworn and testified - Oral motion of Defs. to strike testimony of Howard Schachter - Granted as to Joost and Denied as to Guillette - Oral motion to strike testimony of Sarenson made by Def. Joost - Motion Granted as to Def. Joost only. Govt. exhibits 39 thru 43 marked for identification - 3 previous witnesses recalled and testified - Oral motion of Def. Joost to strike testimony of Buono- Motion Denied - Oral motion of Def. Joost to strike testimony of Linsky- Motion Denied - Oral motion [illegible] to strike testimony of Linsky- made by Deft.Guillette, Motion Denied. Court adjourned at 5:02pm. (Clarie,J.)m-11/19/73
11/20	JURY TRIAL CONTINUES - ABSENT JURY - Motion of Def. Guillette For Discovery and Inspection, filed. Counsel to confer re requests of Def. Oral motion of Defs. to strike testimony of witness Dandreta and exhibit 44 - Denied as to Joost - Dec. Res. as to Guillette. Govt. exhibits 44,47,48 & 49 marked for identification - Govt. exhibits 45 and 46 made full exhibits - Witness previously sworn, recalled and testified - 3 Govt. witnesses, sworn and testified - Def. exhibits 16,17&20 marked for identification - Def. exh. 18 & 19 made full exhs.

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DATE 1973	PROCEEDINGS
11/20	cont'd...Oral motion of Defs. to strike testimony of R. Brunnell - Denied as to Guillette - Dec. Res. as to Joost - Oral motion of Defs. to strike testimony of R. Brunnel and exhibit #15 (Govt.) - Denied. Court approves release of Exh. #5 (Govt.) and exhibit #15(Govt.) into joint custody of Mr. Coffey and Mr. Wade and Mr. Santos for limited purpose of tests by Defendants. Court adjourned at 5:15pm.(Clarie,J)m-11/21
11/21	JURY TRIAL CONTINUES- ABSENT JURY - Govt. exhibits 50 thru 71, marked for identification - Witness previously sworn, resumes stand and testifies - Deft. exhibits 21 and 22 made full exhibits - Govt. Witness, sworn and testifies. Court adjourned at 4:58pm.(Clarie,J.)m11/21
11/27	JURY TRIAL CONTINUES - ABSENT JURY - Witness previously sworn resumes stand and testifies - Court exh Z sealed - Court Exh. AA, filed. Oral motion of Deft. Joost to strike testimony of R. Wilder as it relates to Joost, Decision Reserved - Govt. Witness, sworn and testifies - Deft's. Exhibit 23 made full exhibit - Deft. Exhibits 24A thru 24C marked for identification. Court adjourned at 5:00pm. (Clarie,J.)m-11/28/73
11/28	JURY TRIAL CONTINUES - ABSENT JURY - Previous Witness, resumed stand and testified - 3 Govt. Witness, sworn and testified - Govt. exhibits 72 thru 78 marked for identification - Defendant exhibit 25 marked for identification - Deft. Motion to strike diagram and other markings on reverse side of Govt. Exh. 10, Granted - Clerk will mask markings. Court adjourned at 4:25pm.(Clarie,J.)m-11.29/73
11/29	Memorandum of Law In Support of Defendant's Motion To Dismiss Because of Failure of Government to Preserve Possible Exculpatory Evidence, Filed.(By Atty. Santos)
11/29	JURY TRIAL CONTINUES - absent jury- Two witnesses, previously sworn, resume stand and testify - Deft. Exhibit 26, marked for identification - Court exhibits CC, DD and EE, filed - Oral Motions of Defendants to Dismiss For Failure to provide Brady Material as ordered by Court, Denied. Court adjourned at 5:00pm.(Clarie,J.)m-11/30/73
11/29	Motion To Withdraw, filed by John A. O'Neill,Jr., Esq.
1/19	Court Reporter's transcript for proceedings held on Nov. 9, 1973, filed in Hartford. (Sperber,R.)
11/26	CJA 21 executed (Clarie,J.) and mailed to A.O. for payment.(Transcript of Testimony of Housand, Stratton, Gervais and Andrews)
11/28	Appl. for Writ of Habeas Corpus ad Testificandum and Order, filed. (Clarie,J.)m-12/4/73
11/28	Marshal's executed return, filed. (Appl. for Writ of H.C. & Order)
1/30	CJA 21 executed (Clarie,J.) authorizing Fingerprint expert.
1/30	The Court Should Exclude Proof of the Noblemet Incident on Any One of the Following Grounds: (1) John Housand is An Unreliable Witness; (2) Guillette Cannot Be Found to Have Committed Noblemet By His Uncorroborated Admission to Housand; (3) Guillette's Alleged Admission To Housand Does not Reveal That Guillette is Expert in the Use of Dynamite; (4) Noblemet is not Similar to Oneco.
12/4	JURY TRIAL CONTINUES: 15 Jurors report - Court rules that Noblemet cannot be considered in case as prior similar act and all evidence on this may not be used - Atty. Santos files Motion to exclude Noblemet evidence and Motion to Dismiss because of Grand Jury proceedings - Motion To Dismiss denied as to both defendants - Atty. Wade asks Court to make individual inquiry of jurors - Court advises that was its intention- Jury queried individually by Court as to exposure to news media or discussion with anyone of the case before them - Witness, previously sworn, resumes stand and testified - 4 Govt. witnesses....

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DATE 1973	PROCEEDINGS
12/4	continued ..... sworn and testified - Govt. exhibits 4,5, &6, filed - Deft's. exibit A, marked for Identification - Court exhibits FF, GG & HH, filed. - Atty. Santos makes Motion that Govt. revealed all information concerning "Danny". Govt. to furnish statement - Court adjourned at 5:08pm until tomorrow at 10:00am.(Clarie,J.)m-12/5/73
12/5	JURY TRIAL CONTINUES: 15 Jurors report - Court exhibits II-1 thru II-36, Brady Material, filed (copies given to opposing counsel) - Govt. exhibit 8, marked for identification - Govt. exhibit 9, filed - Govt. exhibits 10 thru 18 marked for identification - Deft's. exhibits B-1 thru O marked for identification - Witness, previously sworn, resumes stand and testifies - Court adjourned at 5:00pm until tomorrow at 10:00 am. (Clarie,J.)m-12/6/73
12/6	JURY TRIAL CONTINUES: 15 Jurors report - Court Exhibit JJ, filed in camera - Previous witness, sworn and testified - Witness sworn and testified - Govt. exhibits 19 thru 22 marked for I.D. - 4 Govt. witnesses, sworn and testified - Deft's exhibits R & S filed - Government exhibits 22A thru 60, filed- 4 Govt. witnesses, sworn and testified.(Clarie,J.)m-12/7/73
12/7	JURY TRIAL CONTINUES -15 Jurors report - Witness previously sworn, resumes stand and testifies - Govt. exhibits 61, 62, 70, 71 & 73, filed - Govt. exhibits 63, 64A,B,C, &D, 66, 67, 68, 69, 72(parties agree that zerox copy may be substituted for original), 74, 75A & B, marked for identification - Govt. exh. 65 filed as full exhibit - Govt. exhibit #14 made full exhibit - Deft. exh. U & W marked for identification and Deft. exhibit V, filed. Court adjourned at 5:02pm until Dec. 10 at 10:00am. (Clarie,J.)m-12/10/73
12/10	Statement of Paul E. Coffey, Spec. Atty. re disclosure to defense portions of transcript, filed.
12/11	JURY TRIAL CONTINUES - 15 Jurors report - Witness previously sworn resumes stand and testifies - 3 Govt. Witnesses, sworn and testifi - Govt. exhibits 10, 11,13,15A,16,17,19,20,21&22 made full exhibits - Govt. exhibit 10B, filed - Govt. exhibits 77 thru 79 marked for identification - Devt's exh. X,Y,&Z, filed - Deft's exh. K & B-1 made full exhibits. Court adjourned at 5:00pm. (Clarie,J.)m-12/12/73
12/12	JURY TRIAL CONTINUES- 15 Jurors report - Atty. Santos moves for production of name of informat & Location - Court requires brief by Attys. for Defendants - Motion denied at this time - Witness, previously sworn, resumed stand and testified - Deft's. exhibit T now filed as full exhibit - Deft's exhibit AA, filed - Govt. exhibits 12,15,18,& 64,A,B,C & D now filed as full exhibits - Deft's exhibits T-1 & T-2, part of Deft's exh. T, marked individually - 3 Govt. Witnesses, sworn and testified - Court exhibits MM, NN, & OO, filed. Court adjourned at 5:03pm until tomorrow at 10:00am. (Clarie,J.)m-12/13/73
12/13	JURY TRIAL CONTINUES - 15 Jurors report - Govt. exh. 80, filed - Deft's exhibits BB, EE & GG marked for identification - Deft's. exhibits CC, EE & FF, filed - Court exhibit VV now filed and sealed - Court adjourned at 4:30pm until tomorrow at 10:00am. (Clarie,J.)m-12/14/73
** 11/30	JURY TRIAL CONTINUES - absent jury - Witness, previously sworn, resumed stand and testified - 3 Defendants witnesses, sworn and testified - Oral Motion of Defendants to strike the Noblemet incident as evidence, made - Decision Reserved. (Clarie,J.)m-12/3/73
12/14	JURY TRIAL CONTINUES 15 Jurors report - Transcript of Housand testimony for the 13th and 14th, filed. Witness, previously sworn, resumes stand and testifies - Deft's. Exhibits HH thru LL marked for identification, then made full exhibits - Court adjourned at 5:03pm

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DATE 1973	PROCEEDINGS
2/17	Hearing on Motion to Withdraw (Atty. O'Neill), Motion Granted --- Atty. C. Thomas Zinni, files appearance to represent Defendant, Zinni. (Clarie,J.)m-12/18/73
2/	Court Reporter's transcript of proceedings held on Dec. 14, 1973 (testimony of John A. Housand), filed. (Sperber, R.)
2/13	Marsnal's executed return, filed. (Order which accompanies writ.)
2/18	JURY TRIAL CONTINUES: 15 Jurors report - Witness, previously sworn, resumed stand and testified - Govt. Exh. 81, filed - Deft's. Exh. JJ, filed. Govt. Witness, sworn and testified. Court adjourned at 5:01pm until tomorrow at 10:00am.(Clarie,J.)m-12/19/73
12/20	Defendants' Memorandum In Support of the Identity and Production of the Souca Informant, filed.
2/19	Court Reporter's Transcript of Testimont of John A. Housand on December 18, 1973, filed in Hartford. (Sperber,R.)
2/19	JURY TRIAL CONTINUES: 15 Jurors report - Witness, previously sworn, resumes stand and continues testimony - 3 Govt. witnesses, sworn and testified - Court Exhibit WW, filed - Govt. Exh. 82, filed - Court adjourned at 5:02pm until tomorrow at 10:00am.(Clarie,J.)m-12/20/73
12/20	JURY TRIAL CONTINUES: 15 Jurors report - Witness, previously sworn, resumed stand and testified - 3 Govt. Witnesses, sworn and testified - Defendant exhibits NN and OO marked for identification - Govt. rests at 2:51pm. - Atty. Santos makes Motion For Judgment of Acquittal on behalf of David Guillette - Atty Wade makes Motion for Judgment of Acquittal on behalf of Robert Joost - Motion For Judgment of Acquittal, Denied - Atty. Wade moves for severance, Motion Denied. Court adjourned at 3:47pm until tomorrow at 10:00am.(Clarie,J.)m-12/21/73
5/	JURY TRIAL CONTINUES: Defense move for mistrial - no evidence that Defendants caused death of LaPolla, Motion Denied - 15 Jurors report - 6 Defendant's Witnesses, sworn and testified - Defendant's exhibits PP & QQ, filed - Court Exhibit XX & YY, filed. Court Exhibit YY sealed - Defendant's Motion For Bond Reduction, Denied.(Clarie,J.)m12/2
12/26	JURY TRIAL CONTINUES: Jury of 15 report - 6 Defendant's witnesses sworn and testified - Defendant's exhibits OO, NN, RR & SS made full exhibits - Defendant's exhibits TT1 thru TT7, UU & VV filed - Defendant's exhibits WW marked for identification - Government's exhibits 83, filed- Govt's. exhibits 84, & 85 marked for identification - Atty. Santos makes motion for mistrial - Motion Denied - Court adjourned at 5:00pm unitl tomorrow at 10:00pm.(Clarie,J.)m-12/27/73
2/27	JURY TRIAL CONTINUES: 15 Jurors report - 7 Defendant's Witnesses sworn and testified - 1 Deft's. Witness previously sworn, resumes stand and continued testimony - Defendant's exhibits XX-1 thru YY-24, AAA & BBB marked for identification - Defendant's exhibits YY and ZZ, filed. - Government's exhibit 86 marked for identification. Court adjourned at 5:00pm until tomorrow at 10:00am.(Clarie,J.)m-12/28/73
2/28	JURY TRIAL CONTINUES: 15 Jurors rep24 - Defendant's Witness, previously sworn, resumed stand and testified - 6 Defendant's Witnesses sworn and testified - Defendant's exhibits CCC and FFF marked for identification - Defendant's exhibits DDD & EEE filed - Defendant's exhibit FFF made Full exhibit. Court adjourned at 5:15PM.(Clarie,J.)m-1/2/74
/27	Application for Writ of Habeas Corpus ad Testificandum and Order (Clarie,J.)m-1/3/74, filed. Two attested copies of Order and two copies of Writ handed US Marshal for service.

CONTINUED

DATE 1973	PROCEEDINGS
12/27	Application for Writ of Habeas Corpus ad Testificandum and Order (Clarie,J.)m-1/3/74. Two attested copies of Order and two copies of Writ handed US Marshal for service.
12/27	CJA 21 executed (Clarie,J.) authorizing payment or $1435.00 to Federal Reporters for Daily Copy of Transcript.
1974	
1/2	Application For Writ of Habeas Corpus ad Testificandum, and Order, filed.(Clarie,J.)m-1/3/74 Two attested copies of Order and two copies of Writhanded US Marshal for service.
1/2	Government's Request For Jury Instructions, filed.
1/2	JURY TRIAL CONTINUES: 15 Jurors report - Court AAA, filed - Witness previously sworn, resumed stand and testified - Govt. exhibit 87, filed - Atty Wade moves to dismiss case against the two defendants because Government did not furnish Brady material in a timely manner. Atty. Santos joins in Motion for Deft. Guillette. Motion Denied - Atty. Wade makes Motion For Government to re-open case and call Robert Brown as a witness - Court orders witness be available - Motion of Atty. Wade Denied - Atty. Santos moves for mistrial. Motion Denied Deft's. exhibits GGG, HHH & III, filed - 2 Defendant's witnesses sworn and testified - Jury excused at 4:43pm. William Marranese, Defendant's witness, sworn and testified - Atty. Wade moves to dismiss as to the Defendant, Joost. Atty. Santos joins in Motion and also to sever. Motions Denied - Atty. Wade moves to sever. Motion Denied. Court adjourned at 5:12pm until tomorrow at 10:00am.(Clarie,J.)m-1/3/74
1/3	Government's Response in Opposition to the Identity and Production of the Souca Informant, filed.
1/3	Application for Writ of Habeas Corpus ad Testificandum and Order (Clarie,J.)m-1/7/74 Two attested copies handed US Marshal for service.
1/3	JURY TRIAL CONTINUES: 15 Jurors report - Defendant's exhibits D,E,F,H,I,L, N,O,P,Q-1 thru Q-4,UuW made full exhibits - Defendant's exhibits JJJ & KKK, filed - 3 Defendant's witnesses, sworn and testified -Both Defendants rest at 4:47pm - Defendants Guillette and Joost sworn and testified. Court adjourned at 5:05pm until tomorrow at 10:00am. (Clarie,J.)m-1/7/74
1/4	Defendants'(Guillette & Joost) Requests To Charge, filed.
1/4	JURY TRIAL CONTINUES: 15 Jurors report - 2 Govt. Rebuttal Witnesses, sworn and testified - Court Exhibit CCC, filed - Govt. Rebuttal Witness (outside presence of Jury), sworn and testified - Court Exhibits DDD and EEE, filed - Jury returns to Courtroom - Govt. rebuttal witness, previously sworn, resumed stand and testified - Govt. exhibits 88 & 89, filed. Court adjourned at 2:40pm until Monday at 10:00am.(Clarie,J.)m-1/7/74
1/7	Marshal's executed returns, filed. (3 Writs of H. C.)
1/8	JURY TRIAL CONTINUES - 15 Jurors report.- Stipulation filed by Attorneys concerning visit to Dr. Dwyer -Govt. exhibits 74,75A75B,78, 79 and 86 made full exhibits - Deft's exhibit LLL, filed - Govt. rebuttal witness, sworn and testified - Govt. rebuttal concludes at 10:21am - Atty. Santos moves for judgemnt of acquittal and also makes motion for mistrial - Atty. Wade joins in Motions - Motions Denied - Summations from 11:35am to 5:04pm. Court adjourned at 5:05pm until tomorrow at 10:00am.(Clarie,J.)m-1/9/74
1/9	JURY TRIAL CONTINUES - 15 Jurors report - Atty. Coffey commences

DATE 1974	PROCEEDINGS
9cont	's...,final summation at 10:57 and ends at 11:38am. Judge charges from 11:57am to 12:59pm - Jury retires at 12:05pm - Exceptions to charge, after alternated are excused from courtroom to another room, by Atty. Santos which Atty. Wade adopts and has exceptions in addition thereto - Jury and Alternates recalled to courtroom for further charge at 1:46pm - Jury retires at 1:54pm - Atty Coffey notes exceptions to charge - Exhibits & Indictment and verdict form given to jury at 2:07pm - Court recessed at 2:10pm - Jury recalled to courtroom at 3:02pm with alternates. - Court excused jury until tomorrow at 10:00am.(Clarie,J.)m
1/9	Marshal's executed return, filed. (Writ of H. C.)
1/10	JURY TRIAL CONTINUES: 15 Jurors report - Jury of 12 retire at 10:27am to deliberate, alternates retire to Clerk's Office - Court recessed at 10:29am - Jury sends out note at 11:30 am concerning testimony they wish re-read - Court resumes at 12:28pm concerning note- Jury and alternates recalled to Courtroom at 12:46pm to have testimony of Agent Smith re-read - Testimony read by Mr. Sperber - Jury excused at 12:56pm - Court recessed at 12:57pm - Request made at 2:30pm for flash bulbs which were given to jury at 2:40pm - Court reconvenes at 3:57pm and jury advises that they wish to continue deliberation - Jury returns at 4:00pm with verdict of GUILTY on all three counts against Defendants Joost and Guillette. Jury Foreman C. Jacobs - Jury polled at request of both Defense counsel - Verdict ordered recorded and received. Certificates given to all jurors - Atty. Coffey moves that bond be revoked - Motion Granted - Defendants Attorneys given 20 days to file motions. Court adjourned at 4:15pm.(Clarie,J.)m-1/11/74
1/9	Letter (certified) to Deft. Zinni returned marked "Unclaimed", filed.
1/	Defendant Nicholas D. Zinni's Motion To Sever and Motion For Change of Venue, filed.
/28	Two calendar motions, continued to Next Monday.(Clarie,J.)m1/29/74
/28	Endorsements entered on Defendant Nicholas D. Zinni's Motion To Sever and Motion For Change of Venue, "Jan. 28th 1974 Final action over (1) week, when co-defendant Marrapese and Mr. Zinni shall appear with counsel; so ordered."(Clarie,J.)m-1/30/74 Copies sent to Attys. Coffey, Bucci, Zinni, Wade and Santos.
/29	Copy of letter confirming 'phone conversation, filed.
/29	Defendant Guillette and Joost's Motion For Arrest of Judgment, Motion For in Camera Examination of Government File and Motion To Set Aside the Verdict and For Judgment of Acquittal and in the Alternative For a New Trial, filed.
/28	Two Calendar Motions, Over to next Monday. (Clarie,J.)m-1/29/74
/30	(Defts Guillette & Joost's Motion Requiring Government to Set Forth Facts Supporting Conviction, filed.
1/31	CJA 21 executed (Clarie,J.) authorizing payment of $50.00 to Gerard J. Engert (Fingerprint Expert) and mailed to A.O. for payment.
1/31	CJA 21 executed (Clarie,J.) authorizing payment of $57.75 to Robert Saunders (Sound and Tape Expert) and mailed to A.O. for payment
2/4	Motion Cal. - Deft. Zinni's Motion To Sever - Denied Reserved for Judge who will try case. Deft. Zinni's Motion For Change of Venue - Withdrawn. Briefs to be filed by Attys. Bucci, Coffey and Zinni concerning representation within 2 weeks, by 2/19/74.(Clarie,J)m2/
	Motion For Psychiatric Examination and Commitment filed by Deft. Guillette along with Affidavit of Hubert Santos, Esq.

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DATE 1974	PROCEEDINGS
[redacted]7	Stipulation, filed re Deft. Guillette along with ORDER (Clarie,J. m- "ORDERED that Walter Borden, M.D. of Hartford is appointed to examine the defendant, David Guillette, and to report to the Court." Two attested copies hanged US Marshal in Hartford.
2/8	Hearing on Competency re Deft. Guillette....Dr. Walter A. Borden, Hartford, Conn, sworn and testified - Court finds Defendant in need of treatment and orders that he be transferred to Springfield, Mo. Order to be drawn by Atty. Santos.(Clarie,J.)m-2/11/74
2/8	ORDER, filed. (Clarie,J.)m-2/13/74 "ORDERED that the defendant be committed forthwith to the Medical Center for Federal Prisoners at Springfield, Missouri so that he may be adquately treated for his presen psychiatric problems and report be made back to the Court within 30 days." Copies sent to counsel of record & 2 Attested copies to Marshal.
2/11	Memorandum (re representation), filed by Deft. Marrapese.
2/11	Endorsement entered on Deft. Zinni's Motion For Change of Venue, "The Defendant-Zinni's motion for change of venue was heard and then withdrawn by counsel in open court."(Clarie,J.)m-2/13/74 Endorsement entered on Deft. Zinni's Motion To Sever, "Defendant-Zinni's motion for a severance is denied, without prejudice to its being renewed prior to trial, before the presiding trial judge. So ordered." (Clarie,J.)m-2/13/74 Copies of above endorsements sent to counsel of record.
2/11	Hearing on 4 Cal. Motions - Deft. Guillette's Motions to go off. After conference with Attys. Wade & Coffey reassignment of Deft. Joost motions to be made (Clarie,J.)m-2/13/74
[redacted]9	Memorandum of the United States on the Representation of William Marranese by Andrew Bucci, filed.
2/19	Hearing on Motion Requiring Government to Set Forth Facts supporting conviction, Motion for Arrest of Judgment, Motion To Set aside the verdict and for Judgment of Acquittal or in the Alternative for a new trial, and Motion for In-Camera Examination of Government File -- (all 4 Deft. Joost's Motions) - Memo of Deft. Joost on Motion for Acquittal and Motion for New Trial filed. - Decision reserved on all motions.(Clarie,J.)m-2/20/74
2/15	CJA 20 executed (Clarie & Kaufman, Js.) authorizing payment to Atty. Wade, and mailed to A.O. for payment.
2/27	Memorandum In Support of Motions To Set Aside Verdict, For A New Trial and For An Evidentiary Hearing on Violations of the Jencks Act, filed.
3/6	Endorsement on Motion For In Camera Examination Of Government File, Filed. "The Motion of the defendants, David Guillette and Robert Joost for an in camera examination of Government file, is denied. SO ORDERED." (Clarie, J.)m-3/7/74.
3/6	Endorsement on Motion Requiring Government To Set Forth Facts Supporting Conviction, Filed. "Motion of defendants David Guillette and Robert Joost requiring Government to set forth facts supporting conviction, is denied. So ordered. (Clarie, J.)m-3/7/74.
3/6	Endorsement entered on Motion for Arrest of Judgment, Filed. "Motion of defendants, David Guillette and Robert Joost for arrestment of judgment is denied. SO ORDERED." (Clarie, J.)m-3/7/74.
3/6	Endorsement entered on Motion of Defendants Robert Joost and David Guillette to Dismiss or For a New Trial Because of the Failure of the Government to Turn Over Jencks Act and Brady Material, Filed. "Motion of defendants David Guillette and Robert Joost to dismiss or

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/6 cont'd	for a new trial because of the failure of the Government to turn over Jencks Act and Brady material, is denied. So ordered." (Clarie, J.)m-3/7/ Copies of above endorsements mailed to Attys. Wade, Santos, Coffey, Zinni and Bucci.
3/7	DISPOSITION:(3 cts.) imprisonment for the remainder of his life on count 1, five years imprisonment on count 2 and ten years imprisonment on count 3. Sentences on counts 2 and 3 to run concurrently with sentence imposed in count 1. (Defendant Robert Joost) -(Clarie,J.)m-3/7/
3/7	(David Guillette)- Dr. Walter A. Borden, Hartford sworn and testified - Motion to set aside conviction and in alternative Motion for a new trial has been argued by Atty. Wade previously - Motion Denied in both cases - Ordered the original order concerning psychiatric treatment be rescinded. DISPOSITION: (3 counts)- imprisonment for the remainder of his life on count 1, five years imprisonment on count 2 and ten years imprisonment on count 3. Sentences on counts 2 and 3 to run concurrently with sentence imposed in count 1. Court orders Defendant to be assigned to prison where he can receive psychiatric help. Deft. advised of right to appeal.(Clarie,J.)m-3/8/74
3/5	CJA 21 (Voucher No. 133428 which replaced Vou. No. 48371) executed (Clarie,J.) authorizing payment of $200.00 to Dr. Henry DePhillips for services, and mailed to A.O. for payment.
3/7	Notice of Appeal (Robert Joost), filed.
"	Notice of Appeal (David Guillette), filed. Copies mailed to Attys. Coffey, Zinni, Bucci, Wade and Santos.
3/12	Certified copies of Notices of Appeal (Joost and Guillette) and docket entries mailed to USCA, with copy of covering letter for retur. receipt.
3/11	CJA 21 executed (Clarie,J.) authorizing preparation of transcript by Elliot Sperber, Court Reporter.
3/12	Judgment and Commitment, filed for Defendant David Guillette. (Clarie,J.)m-3/13/74 Two attested copies handed US Marshal in Hartford. Judgment and Commitment, filed for Defendant Robert Joost. (Clarie,J.)m-3/13/74 Two attested copies handed US Marshal in Hartford.
3/1	CJA 21 (Vou. #133417 supersedes Vou.#48370) executed (Clarie,J.) authorizing payment of $784.27 to Robert M. Zimmers, and mailed to A.O. for payment.
3/13	Marshal's Executed Return Filed. (Deft. Guillette). Order re Defendant's psychiatric problems.
3/15	Acknowledgement from USCA for documents mailed on 3/12/74, filed.
3/19	Court Reporter's Notes of Proceedings held on December 17, 1973, filed in Hartford. (Sperber, R.)
3/19	Court Reporter's Notes of Proceedings held on January 28, 1974, fil in Hartford. (Sperber,R.) Court Reporter's Notes of Proceedings held on February 4, 1974, filed in Hartford. (Sperber,R.)
3/19	Court Reporter's Notes of Proceedings held on March 7, 1974, filed in Hartford. (Sperber, R.), 28
3/20	Court Reporter's Notes of Proceedings held on November 2, 6, 7, and 8, 1973, filed in Hartford, (Collard,R.)
3/21	Memorandum of Decision with endorsement thereon, filed. Endorsement reads "3/22/74 Sealed until further order of the Court, So Ordered."(Clarie,J.)m-3/25/74 Copies sent registered mail to Atty. Bucci and Defendant Marranese.

CONTINUED

DATE 1974	PROCEEDINGS
3/26	Record on Appeal mailed to US Court of Appeals.
3/26	Schedules of Hearing re Appellants Guillette and Joose filed in New Haven.
3/22	Affidavit of Thomas Dennis Williams, II, filed. Copies sent to Attys. Santos and Wade. Affidavit and covering letter to Atty. Wade sealed. Copy of Affidavit handed Paul Coffey, Spec. Atty.
3/27	Minutes of Nov. 6, 1973 amended to show 15 jurors reported.
3/27	Defendants (Guillette and Joost) Motion For a Mistrial or To Dismiss or For a Voir Dire Examination of Jurors or Other Relief, filed
1/28	Court Reporter's Notes of Proceedings held on September 21 and 26, 1973, filed in Hartford. (Sperber,R.)
1/28	Court Reporter's Notes of Proceedings held on October 19, 1973 filed in Hartford. (Sperber, R.)
1/28	Court Reporter's Notes of Proceedings held on October 23, 1973, filed in Hartford. (Sperber, R.)
3/27	Marshal's executed return, filed. (Judgment and Commitment for Deft. Guillette).
4/2	Marshal's executed return, filed. (Judgment and Commitment for Deft. Joost)
4/3	Acknowledgement for documents mailed to USCA on 3/26/74, filed.
4/8	Motion For Return of Exhibits, filed. "...It is requested that all exhibits relating solely to the "Noblmet" hearing, which were ruled inadmissable at trial, be returned to the custody of the United States"...."SO ORDERED."(Clarie,CJ)m-4/10/74 Copy handed Atty. Coffey
4/9	Hearing on Motion for Mistrial based on Affidavit -- Defendants Brief in Support of Motion for Mistrial, filed. - Govt. moves for denial of motion. Hearing adjourned to chambers. Two witnesses sworn and testified - Court exhibit A, filed. Motion denied.(Clarie,CJ) m-4/10/74
4/9	Endorsement entered and filed on Defendants (Guillette and Joost Motion For A Mistrial or To Dismiss or For a Voir Dire Examination of Jurors or other Relief, "April 9th 1974 After a full hearing, the Court finds that no impropriety or unlawful conduct occurred between the juror and news reporter, which could or did affect the validity of the jury's findings; the motion is accordingly denied in all respects; so ordered."(Clarie,J.) Copies sent to Attys. Coffey, Santos & Wade.
4/10	Receipt signed by Paul E Coffey for Government exhibits #4 thru 8, #13 thru 15, #25 thru 28, #30 thru 78; and receipt signed by Paul E. Coffey and approved by Hubert J. Santos for Defense exhibits #11 thru 21 and #23 thru 26, filed.
4/16	NOTICE OF APPEAL, filed (re Deft's Motion for A Mistrial etc.) Copies sent to Attys. Wade, Santos and Coffey.
4/17	Certified copies of Notice of Appeal and Docket Entries mailed to USCA.
3/19	Court Reporter's Sound Recording of Proceedings held on March 7, 1974, filed in Hartford. (Sperber, R.)
4/22	WM. MARRAPESE - Motion To Produce (Defendant on Apr. 23, 1974 at 10:00 A.M. or at any other such time as the Court may direct... SO ORDERED. (Clarie,J.)m-4/23/74 Two attested handed US Marshal at Hartford. Copy handed Paul Coffey, Spec. Atty.
4/24	Appearance of William Marrapese before Court per Court's Order of 4/22/74 -- Upon Inquiry by the Court, Mr. Marrapese advised that he has retained Atty. Raymond Daniels, Providence, Rhode Island to represent him. Court assigned trial date of May 21, 1974 at

Continued

DATE 1974	PROCEEDINGS
4/24	cont'd... Waterbury, Conn. before Judge Murphy for both defendants (Zinni and Marrapese). Motions if any, addressed to case must be filed on or before April 30, 1974. Clerk to advise attorneys for defendants of above orders of the Court.(Clarie,J.)m-4/25/74
4/22	Acknowledgement for documents mailed to USCA on 4/17/74, filed.
4/25	Marshal's executed return, filed. (Warrant for Arrest of Deft.-Marrapese)
4/25	CJA 21 executed (Clarie,J.) authorizing Elliot Sperber to prepare transcript of post trial motion for New Trial.
4/25	Application for Writ of Habeas Corpus Ad Testificandum (Nicholas Zinni) and Order (Clarie,J.)m-4/30/74, filed.
4/29	Defendant's (Marrapese) Motion For Severance and For A Protective Order; Defendant's Motion To Disqualify and Replace Paul E. Coffey As Prosecuting Attorney in Defendant's Cause; and Defendant's Motion For Discovery and Inspection, filed.
4/30	Motion To Photograph Exhibits, filed by Paul E. Coffey, Esq.-So Agreed: by Attys. Santos and Wade.
4/29	Marshal's executed return, filed. (Motion To Produce Deft. Marrapese)
5/1	Deft. Zinni's Motion To Sever, filed.
5/2	Motion of United States For Discovery and Inspection; Rule 16(Federal Rules of Criminal Procedure, filed.
5/3	Hearing on Motions -- 1. Def. Marrapese Motion For Severance and For a Protective Order - Denied without prejudice to renew before trial Judge. 2. Def. Marrapese Motion To Disqualify and Replace Paul Coffey - Denied. 3. Def. Marrapese Motion ForDiscovery and Inspection - Decision Reserve 4. Govt. Motion to Photograph Exhibits - Decision Reserved. 5. Govt. Motion For Discovery and Inspection under Rule 16C - Granted by agreement of Counsel - To be complied with by May 10th.(Clarie,J.)m-
5/6	Endorsements entered and filed on the following motions: 1. Motion of United States For Discovery and Inspection; Rule 16(c), Federal Rules of Criminal Procedure, "May 3, 1974 Motion consented to by counsel for William Marrapese; compliance by May 10, 1974.(Clarie,J) 2. Defendant's Motion To Disqualify and Replace Paul E. Coffey A. Prosecuting Attorney in Defendant's Cause, "May 3, 1974 Defendant Marrapese's motion to disqualify Paul E. Coffey as prosecutor is denied. So ordered."(Clarie,J.) 3. Defendant's Motion for Severance and For a Protective Order, "May 3, 1974 Motion denied without prejudice to its being renewed prior to trial and acted upon by the trial Judge; so ordered."(Clarie,J.) 4. Defendant's Motion For Discovery and Inspection, "May 3, 1974 The defendant Marrapese's motion for discovery and inspection is granted as to paragraphs #1,2,3,4,5,10, 11,13,16 and 17; it is denied as to paragraphs # 6,7,8,9,12,14 and 15." so ordered. (Clarie,J.) all endorsements m-5/7/74 - Copies sent to Attys. Coffey, Daniels and Zinni.
5/6	Hearing re Def. Zinni's Motion To Sever, - Decision Reserved. (Clarie,J.)m-5/7/74
5/8	Endorsement entered and filed on Deft. Zinni's Motion To Sever, "May 7th 1974 Motion denied, without prejudice to its being renewed prior to trial before the presiding trial Judge; so ordered."(Clarie,J. m-5/9/74 Copies sent to Attys Coffey, Daniels and Zinni.

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DATE 1974	PROCEEDINGS
5/	Certified Mail #611113 returned marked "Unclaimed", filed.
5/10	Appearance of Raymond J. Daniels, Esq., entered and filed, to represent the Defendant, William Marrapese.
5/8	Motion For Admission of Visiting Attorney, filed.
5/14	Endorsement entered on Motion For Admission of Visiting Attorney filed..."May 9th 1974 Motion Granted."(Clarie,J.)m-5/15/74 Copies sent To Attys. Coffey, Daniels and Zinni.
5/15	Court Reporter's Notes of Proceedings held on May 3 and 6, 1974, filed in Hartford. (Sperber, R.)
5/20	Court Reporter's Transcript of proceedings held on Oct. 26 & 30, 1973 (Vol. 1), filed. (Sperber,R.)
"	Court Reporter's Transcript of proceedings held on Oct. 31 and Nov. 1, 1973, filed in Hartford (Vol. II). (Sperber,R.)
"	Court Reporter's Transcript of proceedings held on Dec. 4 & 5, 1973 (Vol. III), filed in Hartford. (Sperber,R.)
"	Court Reporter's Transcript of proceedings held on Dec. 6 & 7, 1973 (Vol. IV), filed in Hartford. (Sperber,R.)
"	Court Reporter's Transcript of proceedings held on Dec. 11, & 1 1973 (Vol. V), filed in Hartford. (Sperber,R.)
"	Court Reporter's Transcript of proceedings held on Dec. 18, 19 20, 1973 (Vol IX), filed in Hartford.
"	Vols. VI, VII & VIII filed previously in Dec. 1973.
"	Court Reporter's Transcript of proceedings held on Dec. 21 & 26, 1973 (Vol. X), filed in Hartford. (Sperber, R.)
"	Court Reporter's Transcript of proceedings held on Dec. 27 & 28, 1973, filed in Hartford (Vol. XI). (Sperber, R.)
"	Court Reporter's Transcript of proceedings held on Jan. 2 & 3, 1974 (Vol. XII), filed in Hartford. (Sperber, R.)
"	Court Reporter's Transcript of proceedings held on Jan. 4, 8 & 9, 1974 (Vol. XIII), filedin Hartford. (Sperber, R.)
	Court Reporter's Transcript of proceedings held on Oct. 24 & 26, 1973 (Excerpts of Motions and Arguments on that date before commencement of evidence - Vol. XIV), filed in Hartford, (Sperber, R.)(Transcript filed 10/29/73 Argument of Counsel on 10/26/73 incorporated into vol. XIV and numbered pages 4992 to 5015.)
5/21	ORDER, filed. (Clarie,J.)m-5/22/74..."ORDERED THAT THE Clerk shall surrender the physical exhibits in this case to the United States Government for use in the trial of the USA v. William Marrapese and Nicholas Zinni."
5/21	Receipt from Earl Fowler, AT&F for exhibits being transported to Clerk's Office, Waterbury, Conn., filed.
5/21	CJA 21 executed (Clarie,J.) authorizing payment of $4,304.00 for transcripts prepared by Sperber,R., and mailed to A.O. for payment.
5/21	Atty. Zinni not present in Court. Atty. Daniels asked by Court if he will select jurors on behalf of Deft Zinni. Atty. Daniels agrees upon consent of Deft. Zinni and Atty. Zinni. Defendants brought to Court by Marshal. Deft. Zinni requests that his Attorney select jorors. Case continued until Tuesday, May 28, 1974. Atty Coffey asks that Michael Freeman be allowed to sit at Govt. counsel table... Granted. Deft. Marrapese orally moves for either exclusion of press or in the alternative; that press be ordered not to publish [illegible] of subject matter of trial declared inadmissible--Denied. ([illegible] did not report to Courtroom. RollCall taken in jury room by Cle[illegible] The following jurors absent-Hoppe and Nicoletti--Juror Willis excused for

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	cause. Jurors excused at 11:00 a.m. until May 28, 1974.) Court adjourned at 11:00 a.m. until Tuesday, May 28, 1974 at 10:00 a.m. (Murphy, J.)m-5/23/74 (Marrapese and Zinni)
5/28	JURY TRIAL: Attorney Colley moves for admission of Attorney Ferland (as counsel for deft. Zinni) for purposes of this case - Motion filed - So Ordered. (Murphy, J.)m-5/29/74. In absence of jury, Atty. Daniels orally moves to exclude all public including press or Order Press not to publish certain materials - Granted, as to requesting press not to refer to results of prior trial or personal background of Attorney. Jury reports to Courtroom at 10:20 a.m. - 47 Jurors respond to Roll Call - Voir Dire Oath administered. 12 Jurors and 2 Alternate impanelled and sworn. All remaining jurors excused until call. Jury panel excused and Court adjourned at 11:32 a.m. until tomorrow, May 29, 1974 at 10:00 am. (Murphy, J.)m-5/29/74
5/29	JURY TRIAL CONTINUES: 12 Jurors and 2 Alternates report - Opening statements by counsel - Govt. 10:12 a.m. to 10:25am - Deft 10:25am to 10:37 am (Atty. Daniels) - Deft. 10:37 am to 10:40 am (Atty. Zinni) - Govt. exhibits 1 thru 4, filed - Deft. Zinni orally moves for severance of trial - DENIED. Govt. exhibits 9 thru 15, filed. Govt. exhibits 5,6,7,8, 16 thru 28, 29, 34,35 and 36 made full exhibits- 4 Govt. Witnesses, sworn and testified -Govt. exhibits 28A, 30, 31,32, 33 and 37 marked for identification - Counsel stipulate to fact that Mr. Lapola did not commit suicide of plant device (written stipulation to be prepared. - Defts. Brief, (Admissability of Brooklyn Jail Incident", filed. Deft. orally moves that Court review materials out of presence of press - Govt. makes offer of proof - Govt. moves for admission of tapes - Atty. Daniels requests his cross-examination of witness be reserved until after Court hears tapes - Court hears tapes by earphones - Atty. Daniels cross-examines witness - Defts move that tapes not be admitted - DENIED, exception noted - Deft. Zinni moves that admission of evidence exclude Deft. Zinni or Renews Motion To Sever - DENIED with exceptions - Govt. moves admission of transcript - Court grants Govt, motions for admissions of tapes and transcripts - Deft. moves for presentation of Arguments on Govt. Motions - Ruling withdrawn, arguments heard - Motions for admission of tapes and transcripts granted - Court adjourned at 4:00 pm until tomorrow May 30, 1974 at 10:00 am. Brief of US on Admissability of Tape Recordings and Transcripts thereof, filed. (Murphy, J.)m-5/31/74
5/30	JURY TRIAL CONTINUES: 12 Jurors and 2 Alternates report - Witness previously sworn, resumes stand and continues testimony - Govt. exh 37 made full exhibit - Court, counsel, defendants and jury listen to tape (ex. 34) with earphones - 2 Govt. Witnesses, sworn and testified - Counsel stipulate that Atty. Daniels is not related to nor does he know the John Daniels referred to by the witness - Deft. exhibits A,B, and C marked for identification - Court adjourned at 4:07pm until tomorrow, May 31, 1974 at 10:00 am. (Murphy, J.)m5/31/74
5/31	JURY TRIAL CONTINUES. 12 Jurors and 2 Alternates report - Witness, previously sworn, resumed stand and continued testimony - Deft's. exhibits D,E & F marked for identification - 5 Govt. witnesses sworn and testified - Govt. exhibit marked "Omega" on Deft. request it also be marked as Deft. exhibit, filed - Govt. exhibit 38 admitted as full exhibit - Court adjourned at 4:10pm until Tuesday, June 4, 1974 at 10:00 a.m. (Murphy, J.)m-6/3/74
6/4	Court Reporter's Transcript of proceedings held on April 9, 1974, filed in Hartford. (Elliot Sperber, R.)

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6/4	JURY TRIAL CONTINUES: 12 Jurors and 2 Alternates report - Def. moves to strike statement of Witness Watterson re threat of Mr. Marrapese - DENIED. - Witness previously sworn resumed stand testified - 4 Govt. Witnesses, sworn and testified - Deft's. exhi G thru O, marked for identification - Govt. exhibit #39 made ful exhibit - Jury excused from Courtroom at 3:17pm after Deft. exhi P marked for identification - Govt. rests at 3:17pm - Def. moves dismiss charge against Deft. Marrapese under Rule 29(a) - Def. mo to dismiss charge against Deft. Zinni - Dec. reserved - Deft. Bri The May 8th meeting, Is It The Conspiracy Charged Or Prior Simila Act", filed - Motions Denied - 2 Deft. Witnesses, sworn and testif Court adjourned at 4:30pm until tomorrow June 5th at 10:00am. (Murphy, J.)m-6/6/74
6/5	JURY TRIAL CONTINUES: 12 Jurors and 2 Alternates report - 2 Witnesses, previously sworn, recalled and testified - 13 Defendant witnesses, sworn and testified - Deft. Zinni renews Motion To Sever, Decision reserved - Def. Motion To Sever - noted and Denied(with exc tion) - Defendant's exhibit Q made full exhibit - Deft. exhibit T, marked for identification - Court adjourned at 3:30pm until tomo at 10:00 am., June 6, 1974. (Murphy, J.)m-6/6/74
6/5	Transcript of excerpts from testimony of John Anthony Housand taken on 5/30/74, filed. (Beecher, R.) (3 pgs.)
6/6	JURY TRIAL CONTINUES: 12 Jurors and 2 Alternates report - 4 Defendant's witnesses sworn and testified - Govt. exhibit 40 made full exhibit - Govt. exhibits 41, 42 and 43 marked for identification - Deft. Zinni's Reque Deft's exhibits U & V marked for identification - Deft. Marrapese's Request to Charge, filed - Def. to Charge, filed - Deft. Marrapese's Witness recalled and testified - makes Offer of Proof - Defendant's Witness recalled and testified - Defts. Exhibits G thru R, S as to May 8 only and T made full exhibits 3 Rebuttal (Govt.) witnesses testified - Govt. rests in rebuttal at 3:50pm - All parties rest at 3:50pm - Jury excused at 3:50 until June 10, 1974 at 10:00 am. - Defts. renew all motions made at end of case in chief - Deft. Marrapese moves for Judgment of Acquittal pur- suant to Rule 29(a) - Deft. Zinni adopts Motion and Arguments of Deft. Marrapese - All motions DENIED with exceptions to each counsel - Court adjourned at 3:55pm. until Monday, June 10, 1974 at 10:00 am. (Murphy, J.)m-6/7/74
6/6	Transcript of Excerpts from testimony of John Anthony Housand taken on May 30 and May 31, 1974, filed. (Beecher, R.)
6/10	JURY TRIAL CONTINUES: Court rules on Requests to Charge - Jury of 12 and 2 Alternates enters Courtroom at 10:25am. Summation by counsel from 10:25am to 4:27 pm. Court adjourned st 4:27pm until tomorrow, June 11, 1974 at 10:00 am. (Murphy, J.)m-6/11/74
6/11	JURY TRIAL CONTINUES: 12 Jurors and 2 Alternates present - Court Charges jury from 10:05am to 10:40am - In Chambers: Exceptions to Charge noted by Deft. Marrapese, none by Govt. and Deft. Zinni - Alternate jurors excused at 10:45am - Jury retires to juryroom at 10:45am - All full exhibits, Indictment and Form of Verdict verified by Counsel and Clerk and delivered to jury by Marshal at 10:58am and deliberations begin - Note from jury received by the Court at 11:25am - Court and Counsel In Chambers 11:30am to 12:20pm - Jury recalled to Courtroom for further instructions at 12:25pm - Jury returned to deliv- erations at 12:33pm - Court reopens after recess at 4:43... questions from jury and the Court's

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11 cont'd	...recess 4:45pm to 5:00pm - Jury recalled to Courtroom and excused until tomorrow, June 12, 1974 at 10:00am. Court adjourned at 5:03pm until tomorrow at 10:00 am. (Murphy,J.)m-6/12/74
/12	JURY TRIAL CONTINUES: Jury of 12 present - All full exhibits, Indictment and Form of Verdict delivered to jury in juryroom and deliberations resume at 9:50am - Court opens at 10:15am - Deft. Zinni moves for severence - DENIED - Note from jury received and read, counsel heard - Court recess 10:25am to 10:55 am - Note from jury received and read at 10:57am - counsel heard - Jury reports to Courtroom at 11:05am for further instructions and retire to deliberations at 11:12am - Court reopens after recess at 2:12pm - Jury returns to Courtroom with a verdict of GUILTY on all three counts as to each defendant. Charles Danielian, Jr., Foreman - Jury polled at request of both defendants. Verdict verified and ordered recorded - Jury excused at 2:15PM - No oral motions. All motions to be filed within proper time - Govt. moves to revoke bonds of defendants pending sentencing - Sentencing set for June 26, 1974, Wednesday at 10:00 am.- Defendants remanded to custody of Marshal pending sentence ----Hearing held on Contempt of Court Charge as to Atty. C. Thomas Zinni - Attorney Zinni fined the sum of $20.00 for each of the 37 jurors present - Total fine $740.00 to be paid on or before day of sentence, June 26, 1974. Court adjourned at 2:20pm.(Murphy,J.)m-6/13/74
/18	NICHOLAS ZINNI - Motion For New Trial, Motion To Set Aside Verdict and For Judgement of Acquital, and Motion to Arrest Judgement, filed.
/17	CJA 21 executed (Clarie,J.) authorizing payment of $77.00 to Sperber, R. for transcript, and mailed to A.O. for payment.
6/18	Motions To Set Aside Verdict & For Judgment of Acquittal, For A New Trial & For Arrest of Judgment, filed by Deft. Marrapese.
6/14	Supplement to Record on Appeal sent U.S.Court of Appeals. Copies of Index sent Attys. Coffey, Wade and Santos.
6/19	Receipt from USCA for Suppl. to Record on Appeal, filed.
/26	Hearing held on Deft. Marrapese Motions To Set Aside Verdict & For Judgment of Acquittal, For A New Trial & For Arrest of Judgment - Deft. Exh. A, Filed --Hearing held on Deft. Zinni's Motion For New Trial; Motion To Set Aside Verdict and For Judgment of Acquittal; Motion To Arrest Judgment, All motions denied.
	Transcript of proceedings held June 11, & 12, 1974, filed.(Beecher, R.)(Excerpts: Questions Asked By The Jury and Answers by the Court; Colloquy Among Counsel and the Court; Arguments of Counsel; and The Rulings of the Court and The Exceptions Taken By Counsel.)
/26	DISPOSITION:(3 counts)-Imprisonment for the remainder of his life on count 1, five years imprisonment on count 2 and ten years imprisonment on count 3. Sentences of imprisonment imposed on counts 1,2 and 3 are to run concurrently with each other.(Murphy,J.)m-6/28/74
26	DISPOSITION:(3 counts)- Deft. Marrapese- imprisonment for the remainder of his life on count 1, five years imprisonment on count 2 and ten years imprisonment on count 3. Sentences of imprisonment imposed on counts 1,2 & 3 are to run concurrently with each other. (Murphy,J.)m-6/28/74
6/26	Judgment and Commitment re Deft. Zinni, filed.(Murphy,J.)m6/28/74 Two attested copies handed US Marshal for service.
6/26	Judgment and Commitment re Deft. Marrapese, filed.(Murphy,J.) m-6/28/74 Two attested copies handed US Marshal for service.

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Rewards or Inducements filed by Govt.

DATE 1974	PROCEEDINGS
6/	Court Reporter's transcript of proceedings held on March 7, 1974 filed in Hartford.(Sperber,R.) (Excerpt of Argument By Attorney Santos During Disposition Proceedings of Defendant Guillette)
6/27	Defendants' Third Motion for A New Trial, filed re Defts. Guillette and Joost.
7/2	Court Reporter's Sealed Transcript of in Chambers Proceedings Dec. 3, 1973, filed....and envelope endorsed "Sealed July 2nd, 1974 subject to confidential review of 2nd Circuit Court of Appeals only." (Clarie,J.)
7/2	ORDER, filed.(Newman,J.)m-7/3/74 "ORDERED that the Clerk of this Court disburse the sum of $740.00(representing payment for contempt proceedings against C.Thomas Zinni, Attorney at Law, by Judge Thomas F. Murphy, for failing to appear in court for the impanelling of the jury) to the Administrative Office of the United States Courts."
7/3	Motion To Be Furnished With Matters Exculpating Defendant, filed re Deft. Marrapese
7/5	Defendant's Motion For A New Trial Based on: 1) Newly Discovered Evidence, and 2) Prosecution's Suppression of Material Evidence, filed. (RE: Deft. Marrapese)
7/5	(Deft. Marrapese) Notice of Appeal, filed. Copies sent to Attys. Coffey, Daniels, Wade, Santos, Zinni and Ferland.
7/5	(Deft. Zinni) Notice of Appeal, filed. Copies sent to Attys. Coffey, Daniels, Wade, Santos, Zinni and Ferland.
7/5	Certified copies of Notices of Appeals for Defts. Marrapese and Zinni and docket entries mailed to USCA.
7/8	Memorandum in Support of Defendant's (Marrapese) Motion For A New Trial Based on: 1) Newly Discovered Evidence, and 2) Prosecution's Suppression of Material Evidence, filed.
7/9	Court Reporter's transcript of proceedings held on June 4, 1974, filed in Hartford.(Beecher, R.) (Testimony of Lt. Jas. McDonald)
7/10	Re: Affidavit of Harry S. Gaucher, Jr., filed.
7/15	Acknowledgement from USCA for documents mailed on 7/5/74, filed.
7/11	Acknowledgement from USCA for Second Supplement To Record on Appeal re Defts. Guillette & Joost, filed.
7/19	Response of United States To Defendant Marrapese's Motion For New Trial, filed.
7/19	Defendant's (Zinni) Motion For A New Trial Based On 1) Newly Discovered Evidence and 2) Prosecution's Suppression of Material Evidence, filed.
7/25	Court Reporter's transcript (1 page) of proceedings held on January 8, 1974, filed in Hartford. (Sperber,R.)(Excerpt of Argument of James Wade, Esq. January 8, 1974)
7/3	Second Supplement to Record on Appeal sent U.S. Court of Appeals Copies of Index sent Attys. Coffey, Santos and Wade.
7/26	Defendant Marrapese's Reply to Government's Response To Defendant Marrapese's Motion For New Trial Based upon 1) Newly Discovered Evidence and 2) Willful Suppression of Evidence, filed.
8/2	Marshal's executed return, filed. (Judgment and Commitment re Deft. Marrapese)
8/13	Marshal's executed return, filed. (Judgment and Commitment re Deft. Zinni)
8/16	CJA 23, Financial Affidavit, Filed re Deft. Zinni.
8/28	Motion to Have Defendant (Guillette) Present for New Trial Motion, filed by Atty. Santos.

CONTINUED

a joint trial with Guillette, Motion For [illegible]

USA vs David Guillette et als. Criminal II-524

DATE 1974	PROCEEDINGS
8/23	Mandate dated Aug. 21, 1974 remanding action back to this Dist., filed. (Oakes & Frankel, Js.)
8/7	CJA 21 executed (Murphy, J.) authorizing preparation of Trial and Sentencing transcript.
9/4	Defendant Marrapese's Motion To Be Present In Court During Hearing On Motion For New Trial Based Upon Newly Discovered Evidence, filed.
9/5	Motion To Have Defendant (Robert Joost) Present For New Trial, filed.
9/17/74	CJA 20 executed (Murphy, J.) appointing C. Thomas Zinni, Esq. to represent Defendant Nicholas Zinni for hearing of Motion For New Trial.
9/5	Atty. Coffey moves for permission to allow Atty. S. Michael Levin to appear for Govt. for this matter - Granted. Hearing held on Deft. Marrapese's Motion To Be Present In Court During Hearing on Motion For New Trial Based Upon Newly Discovered Evidence - Denied at this time; if deft. needed at hearing, motion will be granted. - Deft Zinni joins in Motion and moves for continuance of hearing if defendants are to be present - Granted.....Hearing held on Defts. Motion For New Trial - Deft. Zinni moves for sequestration of witnesses - granted except as to Atty. Coffey. 4 Defendant's Witnesses, sworn and testified - Deft. exhibits A & B made full exhibits - Deft. exhibits C&E marked for identification - Deft. exhibit D, filed - Court adjourned at 4:57p.m. until tomorrow, Sept. 6, 1974 at 10:00 A.M.(Murphy,J.)m-9/9/74
9/9	Court Reporter's Transcript of proceedings held May 29, 1974, Trial, Vol I; May 30, 1974, Trial Vol. II; May 31, 1974, Trial, Vol.III; June 4, 1974, Trial, Vol. IV; June 5, 1974, Trial, Vol. V; June 6, 1974 Trial, Vol. VI; June 10, 1974, Trial, Vol. VII; June 11, Trial, Vol. VIII; June 12, 1974, Trial Vol. IX; and June 26, 1974, Sentence, filed. (Beecher, R.)
9/6/	Hearing on Deft's Motion For A New Trial Continues - 2 Defendant's witnesses recalled and testified - Defendant's exhibits C and E made full exhibits - Govt. moves to strike testimony of witness Santos - Govt. makes Offer of Proof- Decision reserved. Govt. exhibit 1, filed - 3 Govt. witnesses, sworn and testified - Defense does not press Motion for presence of Defendants at this hearing to testify - Decision reserved. Simultaneous briefs to be filed in one week, due Sept. 13, 1974. Court adjourned at 2:40 p.m. (Murphy, J.)m-9/9/74
9/10	Marshal's executed return, filed. (Subpoena)
9/12	Memorandum of United States In Opposition To Defendants' Motion For New Trial, filed by the Govt.
9/12	CJA 20 Executed (Clarie, J.) appointing Hubert J. Santos, Esq., to represent Deft. David Guillette.
9/13	Defendant Marrapese's Memorandum In Support of Motion For New Trial, filed.
9/16	Defendant Zinni's Memorandum in Support of Motion for a New Trial, Filed.
9/18	Endorsement entered and filed on Deft. Joost's Motion To Have Defendant Present for New Trial Motion, "Sept. 18th 1974 Motion granted; So ordered."(Clarie,J.)m-9/19/74
	Endorsement entered and filed on Deft. Guillette's Motion To Have Defendant Present For New Trial Motion, "Sept. 18th, 1974 Motion granted; so ordered."(Clarie,J.)m-9/19/74 Copies of endorsements handed Attys. Santos and Coffey and copy mailed to Atty. Wade.
/17	(Deft. Joost's) Motion For Transcript, filed.

CONTINUED ON Page 18

DATE 1974	PROCEEDINGS
9/12	CJA 21 executed (Murphy, J.) authorizing payment to Beecher, R. and mailed to A.O. for payment. (transcript.)
[redacted]3	CJA 21 executed (Clarie,J.) authorizing payment to Beecher, R. and mailed to A.O. for payment. (transcript)
9/1[redacted]	Appl. for Writ of H. C. ad Testificandum and Order (Clarie,J.)m9/24/7 filed. Two attested copies handed US Marshal for service. (Guillette)
9/1[redacted]	Appl. for Writ of H.C. ad Testificandum and Order (Clarie,J.)m9/24/7 filed. Two attested copies handed US Marshal for service. (Joost)
9/24	Appearance of Hubert Santos entered and filed to represent Deft. Guillette per CJA appointment9/12/74.
9/30	Court Reporter's transcripts (2 Vols.) of proceedings held on September 5 and 6, 1974, filed in Hartford.(Collard, R.)
10/3	Hearing on Defendants' Third Motion For a New Trial -- Atty. S. Michael Levin admitted for purposes of this case only - Atty. Santos makes Motion For Sequestration of Witnesses, Motion Granted - 3 Deft. Witnesses sworn and testified - Deft. exhibits 1,2,3,and 8 thru 17, filed Deft. exhibits 4 thru 7 made full exhibits - Atty Wade makes Motion For Another copy of Transcript, Motion Denied - Case continued until October 21, at 2:00 pm. (Clarie,J.)m-10/4/74
10/1[redacted]	CJA 21 executed (Clarie,J.) and mailed to A.O. for payment.(Transcript prepared by Collard R.)
10/21	Continued Hearing on Defendants Third Motion For A New Trial - 2 Deft's. Witnesses, sworn and testified - Deft. exhibits 18 & 19, filed Govt. exhibits A & B, filed - Court exhibit 1, filed and Ordered sealed - Govt. Witness sworn and testified. Hearing continued to Nov. 11th. at 2:00 pm.(Clarie,J.)m-10/22/74
10/[redacted]4	Memorandum filed. (Murphy, J.) m-10/24/74. "...The Motions are denied." Copies distributed to counsel of record.
10/29	Memorandum, filed. (Murphy, J.)m-10/29/74 "....motion to submit additional evidence on defendants' motion for a new trial, dated October 22, 1974, is denied. In denying the motion we will assume that Sgt. McDonald would testify substantially as indicated in the motion papers. This is an order." Copies sent to all counsel of record.
10/29	Motion To Submit Additional Evidence On Defendant's Motion For a New Trial on Newly Discovered Evidence and Prosecution Misconduct, filed by Deft. Marrapese.
10/31	Appellant Marrapese's Notice of Appeal From Court's Denial of Motion For New Trial Based upon (1) Newly Discovered Evidence and (2) Prosecution Suppression of Material Evidence, filed. Copies sent to Attys. O'Neill, Ferland, Daniels and Coffey. Copy also sent to Atty. Zinni. Certified copy of Notice of Appeal and docket entries sent USCA.
11/4	Two Notices of Appeal, filed by Deft. Zinni. Copies sent to counsel of record.
11/4	Certified copies of Notices of Appeal and Docket entries sent U.S.C.A.
11/6	Motion To Exhume the Body of Daniel La Polla, filed.(by Defts. Guillette and Joost)
11/5	Court Reporter's Notes of Proceedings held on Sept. 5 and 6, 1974, filed in Hartford. (Collard, R.)
11/11	Motion for Postponement, with endorsement thereon, filed. Endorsement reads: "11/11/74 - Motion Granted, T. Emmet Clarie, USDJ". m-11/13/74. Copies sent to Attorneys Wade, Santos and Coffey.
11/11	Endorsement entered and filed on Motion to Submit Additional Evidence on Defendant's Motion for a New Trial on Newly Discovered

CONTINUED

DATE 1974 PROCEEDINGS

(Cont'd. from Page 18)

Evidence and Prosecution Misconduct. "Motion denied as set forth in our Memorandum of Oct. 29, 1974. Nov. 6, 1974, Thos M. Murphy, USDJ". m-11/13/74. Copies sent to Attys. Daniels, Zinni, O'Neill and Coffey.

11 CJA 21 executed, authorizing transcript to be prepared by Paul Collard, reporter.

11/12 Acknowledgement for documents mailed Nov. 4th received and filed from USCA.

11/12 Defendant-Appellant Marrabese's Motion for a New Trial Based Upon Additional Newly Discovered Evidence, (and/or prosecution suppression of material evidence.), Filed.

11/12 Court Reporter's Transcripts of Proceedings (two volumes) held on Oct. 3, 1974 and Oct. 21, 1974, filed in Hartford. (Sperber, R.)

11/11 Motion For Postponement to 11/25/74, filed. Motion Granted. (Clarie,J.)m-11/12/74

1/15 Acknowledgement for documents mailed 10/31/74 to USCA received and filed.

11/6 CJA 21 executed,(Murphy,J) and mailed to A.O. for payment. (Transcript on Hearing for New Trial (Zinni).

11/18 Stipulation by Attys. Santos, Wade and Coffey, filed.

11/18 Defendant-Appellant Zinni's Motion For A New Trial Based Upon Additional Newly Discovered Evidence, (And/Or Prosecution Suppression of Material Evidence, filed.

11/18 ORDER, filed. (Clarie,J.)m-11/19/74 "That the original tape of a conversation among US Attorney Peter Dorsey, Andrew Bucci, Esq., and John Housand recorded in the office of the U. S. Attorney Dorsey on November 13, 1974, be filed forwith with the Clerk, U. S. District Court, Hartford; that one copy of same be delivered to defendants' counsel and that transcripts of said recording be delivered to Hubert J. Santos, attorney for DAVID GUILLETTE, and James A. Wade, attorney for ROBERT JOOST and U. S. Attorney Peter Dorsey." Copies sent to Attys. Santos, Wade and Coffey. (Re: Tapes, see Cr. H-74-182)

11/18 Motion For Appeal Bond, filed by Defts. Guillette and Joost.

11/15 Court Reporter's Notes of Proceedings held on Oct. 3rd and 21st, 1974, filed in Hartford. (Sperber, R.)

11/21 ORDER, filed. (Clarie,J.)m-11/25/74 "ORDERED that Mr. James McDonald, who has appeared as a witness in these proceedings, shall file forthwith with the Office of the Clerk.....the "major printing" of the defendants GUILLETTE and JOOST performed by Mr. McDonald in the office of the United States Marshal....on October 3, 1974 and xerox-photocopies of same will be provided by the Clerk to Attorneys Hubert J. Santos and James A. Wade." Copies of prints sent to Attys. Santos and Wade. Copies of Order also sent to Attys. Santos and Wade.

11/26 Application for Writ of Habeas Corpus Ad Testificandum and Order, filed. (Clarie,J.)m-12/5/74. Two attested copies handed U.S. Marshal for service.

11/27 Four Applications for Writs of Habeas Corpus Ad Testificandum and Orders, filed. (Clarie,J.)m-12/5/74. Two attested copies of each handed U.S. Marshal for service.

11/29 Application for Writ of Habeas Corpus Ad Testificandum and Order, filed. (Newman,J.)m-12/5/74. Two attested copies handed U.S. Marshal for service.

[illegible]5 Excerpt of Proceedings on October 24, 1973, before the Selection of the Jury, filed. (Sperber, R.)

CONTINUED ON PAGE 19

DATE 1974	PROCEEDINGS
12/2	Hearing re Order of Court that all Attorneys be present to set time table - Motion For Production of Documents filed by Atty. Wade and Santos - Attys. Zinni and Daniels adopt same motion - All defense Motions to be filed on or before Dec. 10th. - Govt. to file answers by Dec. 10th. - Hearing on all motions filed to be held on Dec. 17th at 10:00 a.m. - Court will hear Motions for Bail on Dec. 11th at 10:00am as well as Motion for Production - Atty. Elliott makes motion for release of John Housand and cancellation of Bond - Motion Denied. Bond to stay at $100,000.00 with full surety - Court advises Atty. O'Neill that he may not appear as counsel in this case as co-counsel for Marrapese due to conflict of interest with Atty. Bucci. (Clarie,J.)m-12/3/74
12/9	Marshal's executed return, filed. (Appl. for Writ of H.C.)(Housand
12/10	Defendants' Amended Third Motion For A New Trial (Joost and Guillette), filed.
12/10	(Joost & Guillette) Motion To Dismiss For Failure To Turn Over Brady Material; Motion For Mistrial; Motion For Appointment of Auditor; Motion For Further Discovery; Motion To Order Grand Jury Investigation and Motion To Reconsider, filed.
12/5	Court Reporter's transcript of proceedings held on December 2, (Relating only to that of the Material Witness, John Anthony Housand) 1974, filed in Hartford.(Sperber,R.)
12/10	(MARRAPESE AND ZINNI) Motion To Vacate Sentence and Set Aside Judgment; Motion For Appointment of Auditor; Motion For Mistrial; Motion To Reconsider; Motion To Set Bail;-(Zinni)- Motion To Set Bail (Marrapese); Motion To Order Grand Jury Investigation; Motion For Further Discovery and Motion To Dismiss, filed.
*12/11	Motion by Atty. Ozer for continuance of hearing on Dec. 17th until trial on Cr. H-74-185 - Objections by all Defense Attorneys - Hearing will proceed on the 17th as scheduled.(Clarie,J.)m-12/13/74
12/12	#1 RULING ON MOTION FOR PRODUCTION OF DOCUMENTS, filed. (Clarie,J.) m-12/16/74.....Paragraphs 1,2,5,6 & 10 are granted; Paragraphs 3,7,8 & 9 are granted in part; and Paragraph #4 is denied.Re Guillette and Joost
	#2 RULING ON MOTION FOR FURTHER DISCOVERY, filed. (Clarie,J.) m-12/16/74...Paragraph 1 is granted; Paragraphs 2,4 & 5 are denied; and Paragraph #3 is granted in part. (Re Guillette and Joost)
	#3 RULING ON MOTION FOR FURTHER DISCOVERY (Re Marrapese and Zinni), filed. (Clarie,J.)m-12/16/74... Paragraphs 1, 10 & 11 granted; Paragraphs 2,4 & 5 Denied; Paragraph #6 Denied,with exception; Granted in Part is Paragraphs #3; Paragraph #8 is moot, and Paragraphs #7 & 9 granted to extent. Copies of above rulings sent to all counsel of record
12/12	Endorsements entered and filed on the following six Motions:
	#1 - Motion to Order Grand Jury Investigation,/Joost and Guillette "The motion to order a grand jury investigation, argued this date, is now moot; the grand jury having filed indictments in this matter today. The motion is accordingly denied and dismissed. SO ORDERED.(Clarie,J.12/11/74)m12/16/7
	#2 - Motion To Order Grand Jury Investigation (Marrapese and Zinni), "The motion to order a grand jury investigation, argued this date, is now moot; the Grand Jury having filed indictments in this matter today. The motion is accordingly denied and dismissed. SO ORDERED."(Clarie,J. 12/11/74) m-12/16/74
	#3 - Motion To Set Bail (Marrapese) -, "December 11th, 1974 Motion denied without prejudice."(Clarie,J.)m-12/16/74
	#4 - Motion To Set Bail (Zinni) -, "December 11th, 1974 Motion denied without prejudice."(Clarie,J.)m-12/16/74

CONTINUED

DATE 1974	PROCEEDINGS
12/12	#5 - Motion For Appointment of Auditor (Marrapese and Zinni), "The motion for the appointment by the Court of an auditor is denied. The Government shall file an affidavit signed by a responsible official in the federal Government, who has personal knowledge of all material benefits paid to, on behalf of, or at the request and direction of John A. Housand, from the time he became a Government witness in the case to the present date." (Clarie,J.)12/11/74) m-12/16/74
	#6 - Motion For Appointment of Auditor (Guillette and Joost) - "The motion for the appointment by the Court of an auditor is denied. The Government shall file an affidavit signed by a responsible official in the federal Government, who has personal knowledge of all material benefits paid to, on behalf of, or at the request and direction of John A. Housand, from the time he became a Government witness in the case to the present date." (Clarie,J.12/11/74)m-12/16/74 Copy of each endorsement sent to all counsel of record.
12/12	United States' Answer to Amended Third Motion for a New Trial By Defendants Guillette and Joost, filed
	United States' Answer to Defendants' Motion to Reconsider, filed.
	United States' Answer to Defendants' Motions to Order Grand Jury Investigation, filed.
	United States' Answer to Defendants' Motions for Mistrial, filed.
	United States' Answer to Defendants' Motions to Dismiss, filed.
	United States' Answer To Motion By Defendants Marrapese and Zinni For Appointment of Auditor, filed.
	United States' Answer to Motions By Defendants Marrapese and Zinni To Vacate Sentence and Set Aside Judgment, Filed.
*12/	Hearing on:
	#1 Defendants' (Guillette and Joost) Motion for Appeal Bond
	#2 Defendants' (Guillette and Joost) Motion For Production of Documents
	#3 Defendants' Motion For Further Discovery --Court will issue order on above motions as quickly as possible - Defendants (Guillette and Joost) Motion To Exhume Body of D. LaPolla, Denied - All substantive motions to be heard on Dec. 17th.(Clarie,J.)m-12/12/74
12/13	Request For Out of District Subpoenas, filed by Atty. Santos. SO ORDERED. (Clarie,J.)m-12/18/74
12/17	Continued Hearing on Third Motion for New Trial - Atty. Wade requests sequestration of all government agents and potential witnesses. Atty. Ozer objects. Atty. Wade states he has not received all material ordered to be given to him by Spec. US. Atty. - states omissions. Atty. Wade requests that a copy of each document furnished Defense Counsel, a copy be filed with Court Clerk - Govt. Atty. agrees. Atty. Wade requests Order that Govt. Attys. file timely compliance of service with Clerk. Order to enter - Atty. Santos joins in Mr. Wades Motions - Atty. McNamara states Dr. Donnelly unable to make examination until January, during first week. Atty. Wade requests continuance of two days - Atty. Santos advises Mr. Guillette concurs - Continued to Jan. 13th at 10:00 a.m. Counsel to report without clients as to readiness.(Clarie, J.)m-12/18/74
12/23	ORDER, filed. (Clarie,J.)m-12/26/74....(ORDERED that the defendant be provided with copies of the grand jury testimony of Messrs. Coffey, Petrella, Weronik, Waterson, Fowler, Johnson McDowell and Connally..) Copies sent to Attys. Wade, Santos and Coffey and Ozer.

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DATE 1974	PROCEEDINGS
12/24	Motion For Further Discovery, filed by Defts. Joost and Guillette.
12/26	Motion Requiring The Government to Present All Evidence In Support of Counts III, IV, V and VI of Criminal No. United States V. Bucci, Et al, During The Hearing On Defendants' Motion For A New Trial and For A Protective Order Concerning the Co-Defendants Testimony, filed.
12/19	Record on Appeal (re Deft. Marrapese) sent to USCA.
12/19	Marshal's executed retruns, filed. (Writ of H.C. Joost & Guillett
12/23	Acknowledgement from USCA for record on appeal re Marrapese and Zinni, filed.
12/27	Acknowledgement from USCA for record on appeal mailed on 12/19/7 filed.
12/30	Motion For Further Discovery, filed by Deft. Marrapese & Zinni.
12/31	United States' Answer To Motion Requiring the Government To Present all Evidence in Support of Counts III, IV, V, and VI of Criminal No. United States V. Bucci, Et. Al., During the Hearing On Defendants' Motion For A New Trial and For a Protective Order Concerning the Co-Defendants' Testimony by Defendants Guillette and Joost; United States Answer to Motion For Further Discovery by Defendants Joost and Guillette, and United States' Answer to Motion For Further Discovery by Defendants Marrapese and Zinni, filed.
1975	
1/10	Motion For A Continuance and Affidavit in Support/For Continuance of Motion uance, filed.
1/13	Hearing on Further Motion for Discovery - Dec. Reserved Hearing on Discovery of Psychiatric data concerning Mr. Housand 1 Govt witness sworn and testified Def. Exh 1 thru 6 filed Dec. Reserved (Clarie, J.)
1/22	Court Reporter's Notes of Proceedings held on December 11, 1974, filed in Hartford. (Sperber, R.)
1/22	Motion To Quash Civil Subpoena Duces Tecum and Notice of Deposition, filed.
1/24	Notice of Deposition, filed. (By: Guillette and Joost)
1/27	Motion For Brady Material Concerning Informants or Cooperating Individuals, and Motion For Medical Record from Richard Young Hospital Omaha, Nebraska, filed
1/28	Letter from Paul W. Orth, Esq. dated 1/27/75 and three affidavits, filed and sealed per Order of Court.
1/28	Hearing on Motion To Quash Subpoena and Notice of Deposition, Motion For Brady Material of Cooperating Witnesses and Motion Requiring Government to Disclose Evidence - Decisions Reserved.(Clarie,J.)
1/31	Motion To Withdraw As Counsel For William Marrapese by Atty. Daniels, filed.
2/3	Request For Out of District Subpoenas, filed. SO ORDERED 1/31/75 (Clarie,J.)m-2/3/75 Attested copy given to US Marshal at Hartford. Ordered sealed.
2/3	Appearance of Paul W. Orth entered and filed to represent the defendant William Marrapese.
2/4	Motion To Withdraw as counsel for W. Marrapese, filed by Atty. O'Neill.
2/5	Three Vols. of Transcripts filed by E. Sperber Pg.1-74,

CONTINUED

DATE	PROCEEDINGS
	Pg.75-87 and Pg. 1-103
/5/75	Ruling on Motion for Further Discovery (M 2/6/75)(Clarie, J.) Copies sent to Attorneys of record
2/	Endorsement entered and filed on Motion Requiring The Government To Present All Evidence in Support of Counts III, Iv, V and VI etc., "The Defendant Guillette by his attorney, HubertSantos, Esq., withdrew this motion at the hearing. However, the defendant Joost, by his ttorney, James Wade, Esq., represented that he would ask the Court to decide the motion. The Court denies the motion in all respects. The Court has no lawful authority to grant the relief requested. SO ORDERED."(Clarie,J.)m-1/7/75 Copies to Attys. Dowd, Santos and Wade.
2/7	ORDER, filed along with Affidavit of Atty. Dowd. (Clarie,J.)m-2/10
2/7	Motion Re Visiting Attorney, filed along with appearance of Stanford Shmukler to represent the Defendant William Marrapese.
2/7	Ruling on Government's Motion To Quash Civil Subpoena Duces Tecum and Notice of Deposition, filed.(Clarie,J.)m-1/7/75 "Motion Granted." Copies handed to all counsel of record.
2/7	Endorsement entered on Motion For Medical Record From Richard Young Hospital, Omaha, Nebraska and filed. "Feb. 7th 1975 Motion granted by consent; the documents shall be sealed and used only by counsel. SO ORDERED."(Clarie,J.) m-2/7/75
"	Endorsement entered and filed on Motion Re Visiting Attorney, "Feb. 7th 1974 Motion granted; So Ordered."(Clarie,J.)m-2/7/75
2/7	Hearing - Motion For Disclosure of Medical Record of Housand from Omaha, Nebr. - By consent of Housand and Atty. McNamara it is ordered by Court that records may be revealed to counsel but then sealed and retained in Clerk's Office. Copies given to Attys. Santos, Ferland and Wade and Atty. Dowd - Report of Dr. Donnelly will not be made available to counsel at this time - Court reports that Motion To Quash has been granted, copies to Attys. Wade, Santos, Ferland and Dowd. Court advises that any previous statements of Deft. Marrapese before Grand Jury may not be revealed unless there are any inconsistencies in possible testimony - Ruling on Defendants Brady Motion Relating to Informants and cooperative witnesses. Copies to Atty. Wade, Santos, Dowd, Orth Zinni and McNamara. Motion To sever Atty. Zinni made by Atty. Zinni - Motion To Sever Denied.(Clarie,J.) Ruling mentioned mailed to Attys. Ferland and Shmukler. (Clarie,J.)m-2/10/75
2/7	CJA 20 executed (Clarie,J.) appointing C. Thomas Zinni to represent Deft. Zinni for Motion For New Trial.
2/7	CJA 21 executed (Clarie,J.) authorizing Elliott Sperber to prepare transcript on Motion To Sever req. by C. Thos. Zinni.
2/10	Hearing - Third Motion for New Trial -Atty. Orth states that Motion for New Trial will be withdrawn at time Deft. Marrapese testifies- Motion By Atty. Orth to admit visiting Attorney Shmukler, Motion Granted- Atty. Wade moves for sequestration of witnesses - Atty. Dowd objects- Motion To Sequester granted. John A. Housand, Georgia, sworn and testifies Mr. Housand invokes Fifth Amendment - Atty. Wade asks for ruling from Court - Court sustains Mr. Housand's right to invoke Fifth Amendment - Atty. Wade moves that Govt. grant use of immunity by John Housand. Denied by Court - Atty. Wade requests the Court to order a new trial and is joined by Attys. Zinni and Santos, Motion Denied - Atty. McNamara makes motion for him and Atty. Elliott to be given transcript in lieu of being present - Atty. McNamara and Elliott are excused. Court exhibits 1 thru 4, filed - Deft. exh. 207 thru 247, filed. Atty. Wade states that Mr. Joost wishes to proceed pro se, Motion Granted (cont'd on pg.21)

DATE 1975	PROCEEDINGS
	2/10cont'd.-Deft's Witness, sworn and testified - Govt. exhibits 25Z & 26Z, filed - 2 Deft's. Witnesses sworn and testified - Deft's exhibits 25Z thru 28Z, filed. (Deft. Exhibit 27Z also Court Exh. 2). Court adjourned at 5:02pm until tomorrow at 10:00 am.(Clarie,J.) Govt. exhibit #1, filed.(Clarie,J.)
2/11	Continued Hearing on Third Motion For New Trial - Atty. Wade moves Court to provide copy of Dr. Donnelly's report to defendants. Decision Reserved, Witness previously sworn recalled and testified - 2 Deft's. witnesses seorn and testified - Govt. exhibits #2 & #3, filed- Deft's. Exhibits 29Z thru 31Z, filed - Deft's. exhibit #32 marked for identification - Copies of Housand's report by Dr. Donnelly given to counsel, Original and copy to be sealed and remain in possession of the Clerk. Court adjourned at 5:00pm until Thursday at 10:00am.(Clarie,J
2/13	Court Reporter's transcript of proceedings held on May 6th, 1974, filed in Hartford.(Sperber,R.)
2/13	Continued Hearing on Third Motion For New Trial - Memo re non-disclosure of Jencks and Brady Material filed by Atty. Wade to be adopted by Atty. Zinni to be adopted by Atty. Zinni - Govt. exhibit #4, filed. Witness previously sworn recalled and testified - Defendant's exhibits 34Z, 35Z and 37Z(A) thru 37Z(I), filed - Defendant's exhibits 33Z, 36Z, 38Z and 39Z marked for identification made full exhibits - Atty. Courtney Bourns advises that Mrs. Shirley Turner will invoke her 5th Amendment rights and will not testify in this proceeding - Atty. Wade moves for Judgment in Defendant's favor as they have right to all testimony in their favor - all defendants join - Motion Denied. Court adjourned at 5:00pm until tomorrow at 10:00am.(Clarie,J.)
2/14	Continued Hearing on Third Motion For New Trial - Witness previously sworn, recalled and testified - Oral Motion of Defs. for statements of Mr. Marrapese as Brady material, Denied - Defendant's witness sworn and testified - Deft's. exhibits 40Z & 41Z, filed. Court adjourned at 5:05pm.(Clarie,J.)
2/18	Continued Hearing on Third Motion For New Trial - Court exhibits #5 & #6, filed - Witness previously sworn, recalled and testified - Deft's. exhibits 42Z and 43Z, filed - Deft's Witness sworn and testified Court adjourned at 4:58pm until tomorrow at 10:00a.m.(Clarie,J.)
2/19	Continued Hearing on Third Motion For New Trial - Atty. Dowd advises Court what he has given to Defense pursuant to Order of Court dated 2/7/75 - 3 Deft's Witnesses, sworn and testified - Court exhibit #7, filed- Govt. exhibits 5,7,8,9 and 10, filed - Govt. exhibit #6 marked for identification - Defendants rest at 12:42pm - Defense requests daily copy of Mr. Marrapese's testimony - Decision reserved - Atty. Wade makes motion for Grand Jury testimony of Deft. Marrapese - Motion Denied without prejudice and may be renewed after testimony of Deft. Marrapese - Atty. Stanford Shmukler now in Court to represent Deft. Marrapese and states he withdraws Motion for New Trial at this time - Appeals will also be withdrawn; Upon filing of Motions they will be granted - Deft. Marrapese in Marshal's custody, sworn and testified - Atty. Wade requests opportunity to Voir Dire Deft. Marrapese on his mental capacity to testify, Motion Denied - Atty. Wade requests that a Court appointed psychiatrist be appointed to examine Mr. Marrapese before he testifies - Motion Denied - Court adjourned at 5:08pm until tomorrow at 10:00am.(Clarie,J.)
	CONTINUED

DATE 1975	PROCEEDINGS
2/20	Continued Hearing on Third Motion For New Trial - Court exhibits #8 thru 12, filed - Deft's. exhibits #447 thru #477, filed - Atty. Santos moves for production of pre-sentence report of Mr. Marrapese on the gun case and the Waterbury case - Court advises Mr. Santos he will contact the Probation Dept. - Deft. Marrapese previously sworn resumes stand and testifies - Withdrawal of New Trial Motion of Mr. Marrapese, filed. Atty. Dowd adds letter from US Marshal setting forth amounts spend on food and medicine for Mr. Marrapese to Court exh. #8. Atty. Santos moves for all FBI reports on Mr. Marrapese - Decision reserved. Court adjourned at 5:13pm.(Clarie,J.)
2/21	Continued Hearing on Third Motion For New Trial - Daily transcript filed by Court Reporter - Court exhibit #13, filed. Atty. Zinni makes Motion for Severance and New Trial. Motion Denied. - Deft. Marrapese previously sworn, testified - Deft's. exhibits 487 thru 547 filed. Atty. McNamara states he has Motion to Stay Testimony of Dr. Donnelly which he files and argues. Motion Denied - Dr. John Donnelly, Govt. witness sworn and testified- Govt. exhibit #11, filed - Daily transcript filed by Mr. Sperber. Court adjourned at 4:55pm.(Clarie,J.)
2/24	Court Reporter's transcript of proceedings held on February 19, 1975, filed in Hartford. (Testimony of William L. Marrapese)
2/25	Continued Hearing on Third Motion For New Trial - Court exhibits 14, 15, 16, filed - Mr. Marrapese previously sworn, resumes stand and testifies - Deft's. exhibits 557 filed and 567 thru 627 marked for identification - Deft. exhibits 567 thru 627 made full exhibits - Atty. Santos moves for information on any interceptions on phones of the four defendants and their attorneys - Affidavit to be filed by US Atty. after he checks with Govt. agencies -2 Govt. witnesses sworn and testified Govt. exhibits 12, 13 & 14, filed - Court adjourned at 4:37pm until tomorrow at 10:00 am.(Clarie,J.)
2/26	Court Reporter's transcript of proceedings hend on Feb. 25, 1975, filed in Hartford.(Sperber,R.)
2/26	Continued Hearing on Third Motion For New Trial - 3 Deft. Witnesses sworn and testified - Court exhibits #17A & 17B, filed - Court Witness sworn and testified - Govt. exhibit #16, filed - Arguments commence at 2:00pm on Motion for New Trial - Atty. Zinni makes Motion for Directed Verdict of Acquittal despite jury verdict. - Decision Reserved on all Motions. Court adjourned at 4:42pm.(Clarie,J.)
3/3/	- Response of United States To Defendants Motions for New Trial, filed.
3/5	Court Reporter's transcript of proceedings held on February 14, 1975, filed in Hartford. (Sperber,R.)(Testimony of Paul E. Coffey)
3/6	Court Reporter's transcript of proceedings held on February 18, 1974, filed in Hartford. (Sperber,R.) (Testimony of Paul E. Coffey)
2/25	CJA 21s (Vou. #102986, X02979 and X02980) executed (Clarie,J.) and mailed to A.O. for payment. (See Crim.H-74-172 & H-74-93)
3/3	CJA 21s (Vou. #133411 & 433410) executed (Clarie,J.) and mailed To A. O. for payment. (Transcripts of Testimony of Wm. Marrapese on Feb. 19, 20,21 & 25, 1975)
/11	Court Reporter's transcript of proceedings held on February 21, 1975 (Testimony of John Donnelly, M.D.), filed in Hartford.(Sperber,R)
/12	Court Reporter's transcript of proceedings held on February 26, 1975, filed in Hartford.(Sperber,R.)

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DATE 1975	PROCEEDINGS
3/20	Court Reporter's transcript of proceedings held on February 18, 1975, filed in Hartford.(Sperber,R.)
3/25	Court Reporter's transcript of proceedings held on February 26, 1975, filed in Hartford.(Sperber,R.)
4/10	Court Reporter's Notes of Proceedings held on January 30, 1975, filed in Hartford. (Beecher, R.)
4/18	RULING ON MOTION FOR A NEW TRIAL, filed.(Clarie,J.)m-4/18/75 ..... The defendants' motions for a new trial are therefore granted, and it is so ordered." Copies handed Attys. Orth, Santos and Wade and Coffey. Copies mailed to Attys. Zinni.
4/21	Motion For Bond and For Hearing on Bond, filed by Defts. Guillette and Joost.
3/31	Marshal's Executed Return filed. (Appli. for Writ of H.C.)
4/24	(Deft. Zinni's) Motion To Set Bail, filed.
4/24	Court Reporter's Notes of Proceedings held on February 10 and 11, 1975, filed in Hartford. (Collard, R.)
4/25	Motion To Consolidate Indictments, filed by Govt.
4/28	Notice of Appeal, filed by Defts Guillette and Joost .(Re: Ruling of 4/18/75). Copies sent to counsel of record.
4/28	Certified copy of Notice of Appeal and Docket Entries mailed to USCA.
4/30	Court Reporter's Notes of Proceedings held on December 11 and 17, 1974, and January 13 and February 7, 1975, filed in Hartford. (Sperber, R.)
4/25	Hearing re (Guillette and Joost) Bonds - Bond of Defts, Joost and Guillette set at $100,000.00 each with full surety - Bond of Deft. Zinni set at $25,000.00 with full surety. Case assigned for trial May 13th at Waterbury - any motions to be filed with Court at that time.(Clarie,J.)
4/28	Mandates from USCA dated April 17, 1975, filed.(Friendly,Timbers VanGraafeiland, Js.) Re: Nicholas Zinni, Appellant.."It is hereby ordered that the above case be and it hereby is remanded to the United States District Court for the District of Connecticut for the purpose of enabling the District Court to rule upon the defendant's motion for a new trial and to take such further action as may be appropriate." Re: David Guillette and Robert Joost...."It is hereby ordered that the above case be and it hereby is remanded to the United States District Court for the District of Connecticut for the purpose of enabling the District Court to rule upon the defendants' motion for a new trial and to take such futher action as may be appropriate. See United States v. Comulada, 340 F.2d 449, 453 (2nd Cir. 1965); United States v. Hinkle, 181 F.2d 538 (2d Cir. 1950).(Lumbard, Moore & Mansfield, JS.)
5/5	Attested copy of Stipulation for Voluntary Dismissal of Appeals Under Rule 42(b) of the Federal Rules of Appelate Procedure, filed.
5/5	Motion For Severance by Defendant Robert Joost, filed. GUILLETTE AND JOOST - Motion For Reassignment, Motion For Continuance, Motion To Require Government To File Responses With the Clerk, Motion Re Anthony Souca Informant, Motion To Dismiss Indictment Because of Misconduct of A Government Agent To Wit: John Housand, Motion To Dismiss Indictment Obtained Through the Testimony of A Perjurer, Motion To Dismiss Because of Wilful Non-Disclosure or Brady Material by the Prosecuting Attorney, Motion to Dismiss Indictment Because of the Failure of the Government to Present All Relevant Evidence to the Grand Jury, Motion To Dismiss For Lack of In Personam Jurisdiction,....

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DATE 1975	PROCEEDINGS
5/5cont'd	...Motion To Dismiss Count 1,-Motion To Dismiss Because of Grand Jury Proceedings,-Motion To Dismiss Count 1,-Motion To Dismiss, -Motion of the Defendant To Be Furnished With Statements of Promises, Rewards or Inducements, Motion For Copy of Statements, Motion of the Defendants for the Production of Police Department Reports, Motion By Defendants, David Guillette and Robert Joost, For Production at Trial, Motion of David Guillette and Robert Joost For Bill of Particulars, -Motion Requiring Special Attorney Coffey to Inspect And Examine Other Investigatory Files and Personnel, Motion For Individual Examination Of Prospective Jurors and For Additional Preemptory Challenges and Motion By Defendants David Guillette, Robert Joost, For Discovery and Inspection, filed.
5/5	Hearing - Judge Clarie advises Counsel that H-75-39 and H-524 will be reassigned to another Judge - other than Judge Murphy and trial will not go forward on May 13th at Waterbury - Trial will most likely be held at New Haven - Date to be set for hearing on Motions in Crim. H-524.(Clarie,J.)
4/18	CJA 21 executed (Clarie,J.) authorizing payment of $300.00 to James E. McDonald, mailed to A.O. for payment.
5/1	Record on Appeal returned from U.S.C.A. (File kept in N.H.)
5/7	~~Motion To Suppress re Deft. Guillette, filed.~~
5/7	Defts. Joost & Guillette - Motion For Designation of New Haven as Seat of Trial; Motion For Disclosure of Information Concerning Daniel La Polla; Motion To Postpone Trial Until After Trial of John Anthony Housand; Motion For Change of Venue; Request Pursuant to Standing Order and Motion For Brady Material Concerning Informants of Cooperati Individuals, filed. Motion to Dismiss, filed.
5/8	Letter from Deft. Joost opposing any continuance, filed pro se. ((
5/8	Motion For Discovery and Inspection Concerning Power of Special Prosecutor, filed re defts. Guillette and Joost.
5/9	Bond in the amount of $25,000.00 for Nichola Zinni with full surety, filed. Surety is Matthew C. Alaimo.(Clarie,J.)m-5/12/75
5/12	Motion for Reduction of Bail, filed re Defts. Guillette and Joo
5/12	Acknowledgement for Documents mailed on April 28th received and filed, from USCA.
5/13	Endorsement entered and filed on Defts. Guillette and Joost's Motion For Reduction of Bail, "May 13th, 1975 Motion denied."(Clarie, m-5/13/75 Copies sent to Attys. Santos, Wade and Coffey.
5/16	Endorsements entered and filed on the following Motions: 1. Motion To Postpone Trial Until After Trial of John Anthony Housand. "May 9th 1975. Motion Denied."(Clarie,J.)m-5/16/75 2. Motion To Suppress, "May 9th 1975. Motion denied."(Clarie,J)m5/16 3. Motion To Dismiss, "May 9th 1975. Motion to dismiss is denied." (Clarie,J.)m-5/16/75 4. Motion For Discovery and Inspection Concerning Power of Special Prosecutor, "May 9th 1975. Motion Denied; so ordered."(Clarie,J.)m-5/1 5. Motion For Designation of New Haven As Seat of Trial, "May 9th 197 The motion for change of venue is granted, to the extent that Bridgepo is designated as the seat for retrial; So ordered."(Clarie,J.)m-5/16/7 6. Motion For Change of Venue, "May 9th 1975. The defendant's motion for change of venue to New Haven has been granted; New Haven has been designated as the seat for retrial; So ordered."(Clarie,J.)m-5/16/75 Copies of above endorsements sent to all counsel of record.

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DATE 1975	PROCEEDINGS
5/19	The following Motions, filed re Deft. Nicholas Zinni:
	1. Request Pursuant to Standing Order
	2. Motion To Dismiss For Lack of In Personam Jurisdiction
	3. Motion For Brady Material Concerning Informants Or Cooperating Individuals
	4. Motion To Dismiss Indictment Because of Misconduct of A Government Agent to Writ: John A. Housand
	5. Motion By Defendant, Nicholas D. Zinni, For Discovery and Inspection
	6. Motion To Dismiss Indictment Because of the Failure of the Government To Present All Relevant Evidence to the Grand Jury
	7. Motion For Severance by Defendant, Nicholas D. Zinni
	8. MotionTo Dismiss Indictment Obtained Through The Testimony of A Perjurer
	9. Motion By Defendant, Nicholas D. Zinni For Production At Trial
	10. Motion of Nicholas D. Zinni For Bill of Particulars
	11. Motion of the Defendant, Nicholas D. Zinni, For The Production of Police Department Reports
	12. Motion For Copy of Statements
	13. Motion of the Defendant, Nicholas D. Zinni, To Be Furnished With Statements of Promises, Rewards, or Inducements
	14. Motion To Dismiss
	15. Motion To Dismiss Because of Grand Jury Proceedings
	16. Motion To Require Government To File Responses With the Clerk
	17. Motion To Postpone Trial Until After Trial of John Anthony Housand
	18. Motion For Disclosure of Information Concerning Daniel Lapolla
	19. Motion To Dismiss Count I
	20. Motion For Individual Examination of Prospective Jurors and For Additional Preemptory Challenges
	21. Motion To Dismiss
	22. Motion To Dismiss Because of Willful Non-Disclosure of Brady Material By The Prosecuting Attorney.
5/19	Endorsement entered and Filed on Deft. Zinni's Motion To Set Bail, "Bond is set at $25,000.00 with full surety."(Clarie,J.)m-5/19/75
5/19	Endorsement entered and Filed on Defts. Joost & Guillette's Motio For Bond and For Hearing on Bond, "Bond for each of the defendants, David Guillette and Robert Joost, is set at $100,000.00 with full surety (Clarie,J.)m-5/19/75 Copies sent to Counsel of record.
5/20	File hand delivered on 5/19/75 to Hon. Jon O. Newman by Richard Mayna[illegible], Deputy Marshal. Bal[illegible]nce of exhibits remaining in Hartford and original docket mailed to Clerk's Office, New Haven, Conn this date.
5/20	Hearing held on all pending motions. Hearing continued to May 21, 1975 at 10:00 A.M. Newman, J. m-5/21/75.
5/21	Court Reporter's Notes of Proceedings (Motions) held on May 20 and 21, 1975, filed. (Gale, R.)
5/21	Waiver of Physician-Client Privilege, filed by defendant MARRAPESE. Three certified copies mailed to Atty. Wadd at his request.
5/21	Continued Hearing on Pending Motions. Following motions filed by defendant ZINNI (1) Motion to Dismiss Count 1; (2) Motion to Suppress; (3) Motion for Change of Venue; (4) Motion Re Anthony Souca, Informant; (5) Motion for Dis[illegible]ery and Inspection Concerning Power of Special Prosecutor; (6) Motion to Disqualify; (7) Motion to Dismi: Oral Motion of Defendant Zinni for a Continuance to Sept. Oral Motion of defendant Joost to Act as Co-Counsel. Oral Motion of Defendants' Joost and Guillette for Reduction of Bond. Decision Reserved on all motions. Newman, J. m-5/22/75.
	= (over) =

Conn., Filed.

DATE 1975	PROCEEDINGS
5/22	Request for Inquiry re Electronic Serveillance, filed by defendants JOOST and GUILLETTE.
5/21	On 5/16/75 the Record on Appeal of defendants Guillette and Joost from the Order of April 18, 1975, denying defendants' Request for Dismissal of Indictment, was mailed and on 5/21/75 receipt for same was received from U. S. Court of Appeals.
5/28	Response by the United States to Motion for Disclosure of Information Conerning Daniel LaPolla, filed.
5/29	JOOST: Motion for Reduction of Bail, filed by defendant.
5/29	RULING On Motions for Consolidation, Severance and Continuance, filed and entered. The motion of defendants Guillette and Zinni for a continuance is granted, and sixty days are allowed. The motion of the Government to consolidate for trial Criminal No.s H-524 and H-75-39 is granted, and the motions of all defendants for separate trials are denied. Trial will commence July 28, 1975. Newman, J. m-5/30/75. copies mailed to counsel
6/4	Motion of the United States for Return of Exhibits, filed and endorsed as follows: "All exhibits introduced at any proceedings in these cases may be returned to the party that introduced them into evidence. This order is stayed until June 9, 1975, to permit the Government an opportunity to serve upon defendants a list of those exhibits introduced by defendants, which the government claimes are property of the Government. If defendants do not object, such listed exhibits may also be returned to the Government. Newman, J. m-6/5/75. copies mailed to counsel of record.
6/4	GUILLETTE AND JOOST: Motion by Defendants, David Guillette and Robert Joost, for Production at Trial, endorsed as follows: "Motion granted by consent." Newman, J. m-6/5/75. copies to Santos, Wade & Coffey
6/5	GUILLETTE: CJA Form 21 authorizing investigator, James Conway, filed. Newman, J. copies distributed.
6/5	GUILLETTE: CJA Form 20 appointing Hubert J. Santos, Esq. to represent defendant, filed. Newman, J. copies distributed.
6/4	JOOST: Withdrawal of Appeal, filed by defendant and So Ordered. Newman, J. m-6/5/75. Two certified copies sent to U.S.C.A. and copies sent to Atty. Wade and Coffey, and Santos.
6/11	GUILLETTE: Withdrawal of Appeal, filed by deft and So Ordered. Newman, J. m-6/11/75. Two certified copies mailed to U.S.C.A. and copies sent to Atty. Santos, Atty. Coffey and Dorsey.
6/12	JOOST: Motion for Reduction of Bail endorsed as follows: "Motion denied. No sufficient reason appears for reducing the bond set May 13, 1975 by Judge Clarie. Newman, J. m-6/12/75. copies sent to counsel of record.
6/13	ZINNI: Marshal's return showing service, filed: Writ of Habeas Corpus as Testificandum.
6/16	JOOST AND GUILLETTE: Record on Appeal re:Appeal of April 18, 1975 of Order denying Deft's. request for Dismissal of Indictment, received from U.S.C.A., receipt acknowledged.
6/16	GUILLETTE: Copy of Order from U.S.C.A., filed. It is hereby ordered that the motion made herein by counsel for appellant David Guillette dated June 4, 1975, to withdraw the notice of appeal filed herein on April 28, 1975 be and it hereby is granted. Feinberg, C. m-6/16/75. Copies mailed to Attys. Coffey, Wade and Santos.
6/19	Response of United States To Request for Disclosure of Electronic Surveillance and Affidavit of Paul E. Coffey, Esq., filed by Government.
6/23	Copies of leeters from Spec. Atty. Coffey to Attys. Wade, Santos and Zinni, re: credit checks made by Govt., filed.

(cont.) Mr. Joost begins

DATE 1975	PROCEEDINGS
6/24	Response of United States to Motion for Statements of Promises, Rewards or Inducements, filed by Govt.
/25	GUILLETTE: Motion for Disclosure of Intercepted Wiretap Conversations, filed by deft.
/25	GUILLETTE: Motion for Selcetion of Jurors from New Haven and Bridgeport Area and for Sequestration of Jury, filed by deft.
6/26	JOOST: CJA From 21 approving the sum of $25.00 payable to Court Reporter, Elliott Sperber, filed and entered. Newman, J. copies distributed.
6/30	GUILLETTE: CJA Form 21 approving the sum of $2,341.00 payable to Hubert J. Santos, Esq, filed and entered. Clarie, J. copies distribute
6/30	Disclosure of Records and Testimony of Jacob Kaplan, filed by Govt.
6/30	JOOST: Notice of Appeal from the Denial of Bail Reduction, filed pro se by the defendant, and endorsed as follows: "May proceed in forma pauperis." Newman, J. m-6/30/75. copies sent to deft. Atty. Wade and Atty. Coffey.
7/1	JOOST: Certified copy of the Notice of Appeal from the Denial of Bail Reduction and docket sheets, sent to Clerk, U.S.C.A.
7/3	Letter from Atty. Santos to Atty. Coffey, re: interview of William Marrapese, filed.
7/2	Ruling on Pre-Trial Motions, filed and entered. "The motions have been numbered by the Court so that this ruling may be more readily understood. Motions Nos. 1, 2 and 3 seek dismissal based on challenges to the use of 18 U.S.C. §241. Those motions are denied in view of Judge Clarie's denial of identical motions. Motion No. 4 seeks dismissal because the Grand Jury heard testimony from the victim LaPolla in connection with a previous indictment. That motion is denied in view of Judge Clarie's denial of an identical motion. Motion No. 5 seeks dismissal for violation of US. v. Estepa. That motion is denied in view of Judge Clarie's denial of an identical motion. Motions Nos. 6 and 7 seek dismissal because the Grand Jury heard testimony of John Housand. Motions Nos. 6 and 7 are denied. Motion No. 8 seeks dismissal on the ground that the prosecutor failed to disclose Brady material. Motion No. 8 is denied. Motion No. 9 seeks dismissal on the ground that the Govt. failed to present to the Grand Jury that returned the indictment in Crim. No. H-524 evidence inculpating deft. Bucci. Motion No. 9 is denied. Motion No. 10 seeks dismissal for lack of in personam jurisdiction. Motion No. 10 is denied. Essentially the same claim is set forth in Motion No. 11, which is also denied. Motions Nos. 12 and 13 concern the role of the special attorney of the Dept. of Justice O.C.S.F., who is prosecuting these cases. Motion No. 13 is reconsidered and granted only to the extent that paragraph 2 thereof should be complied with. In all other respects Motion No. 13 is denied Motion No. 12 is also denied, without prejudice to renewal. Motion No. 14 seeks reassignment from the Dist. Court at Waterbury, motion may be marked off. Motion No. 15 seeks dismissal and trial of the case in R.I. This motion was denied by Judge Clarie, and its renewal is also denied. For the same reasons Motions Nos. 16, 17 and 18, challenging venue, are denied. Motion No. 19 seeking a continuance has been granted in the ruling of May 29, 1975. Motion No. 20 seeks a severance for Joo Motion No. 20 is denied, without prejudice to renewal at trial. Motion No. 21 seeks a severance for Zinni. Motion No. 21 is denied, without prejudice to renewal at trial. Motion No. 22 seeks to sver Count 1 of H-75-39 from H-524, so that Bucci will be tried separately. Motion

D. C. 109 Criminal Continuation Sheet

DATE 1975	PROCEEDINGS
/2	No. 22 is denied. Motion No. 23 seeks severance for Bucci from a Joint trial with Guillette. Motion No. 23 is denied, without prejudice to renewal at trial. Motion No. 24 request the govt to file with the clerk of the Court whatever responses are required by the granting of any motions. Motion No. 24 is granted. Motion No. 25 seeks disclosure of all benefits the govt has extended to witnesses. The government has submitted an extensive reponse to this motion and has agreed to provide current details of expenses at the time of trial. This response is an adequate compliance with the motion. Motion No. 26 seeks production of all reports of law enforcement agencies relevant to the Indictment. As framed, the motion is denied. Motion No. 27 seeks an order requiring the prosecutor to inspect all local, state and law enforcement filed concdrning the death of LaPolla so that compliance with pretrial motions will assure compliacne with Brady. The motion is granted to the xtent of requiring the prosecutor to request federal, state, and local law enfrocement authorities that have investigated the death of LaPolla the opportunity to inspect their and to inspect such files where permitted to do so. Motion Nol 28 seeks production of §3500 material at trial, That motion is granted. Motion No. 29, on behalf of Zinni, seeks postponment of the trial until afther the trial of Housand. Motion No. 29, is denied. Motion No. 30 seeks suppression of items seized during searches of Guillette' car & Apt. and testimony of Housand and Marrapese. This motion, on behalf of Joost and Guillette, was denied by Judge Clarie on May 9, 1975. Motion No. 31 asserts, on behalf of Zinni, the same claims advanced in Motion No. 30. Judge Clarie's ruling is dispositive of the firtt three para graphs of this motion. Since part of the claim relates to the clarity of the recording, a ruling on this issue is deferred to trial. Motions Nos. 32 and 33 seek disqualification of Atty Paul Coffey, the prosecuting Attorney. Motion No. 33, on behalf of Bucci, was previously denied by Judge Clarie. Motion No. 32, on behalf of Zinni, is also denied. Motion No. 34 renews the request made of Judge Clarie to the original trials for disclosure of the identity of an informant. Motion No. 34 is denied. Motion No. 35 seeks disclosure of any statements of the defendants that the govt intends to introduce at trial. That motion is granted. Motion No. 36 seeks disclosure and inspection of various items. The requests are fuled on as follows (using the numbering in the Joost and Guillette motion) No 1.-denied, No. 2-denied, No. 3-granted, No. 4 -granted, No. 5-denied, No. 6-denied, except to the extent covered by Brady. No. 7-denied. No. 8-denied, but must oe available at trial. No. 9-denied. No. 10-granted. No. 11-denied, as too broad in view of opportunity to particularize request in light of prior trials. No. 12, denied for reasons stated in re No. 11. No. 13, granted, No. 14-granted, No. 15-denied, for reasons stated in re No. 11, No. 16-granted, except for 16(i)(a)-(c), which are denied, No. 17-denied, but criminal records of trial witnesses must be available at trial. No. 18, denied as too broad (but see ruling with respect to Motion No. 37), No. 19-granted as to matters disclosed in repponse to Ruling on Motion No. 37, No. 20-denied. No. 21-granted. No. 22-denied. No. 23-denied. No. 24-denied. No. 25-denied. No. 26-denied. No. 27-denied. No. 28-granted. No. 29-denied. No. 30 denied. No. 31-granted. No. 32-denied as too broad, No. 33-granted, No. 34, granted, No. 35-denied, No. 36-granted. No. 37-granted as to the extent the info sought is known, No. 38-denied, No. 39, granted as to income tax retunrs, otherwise denied. In addition, No. 19, of Zinni's Motion No.

DATE 975	PROCEEDINGS
7/2	36 is granted. Motion No. 37 particularizes the request for info. relat to electronic surveillance of the defendants and others. The govt. has responded with respect to six of the eight names. That response sufficiently meets the deft's request. Motions Nos. 38 and 39 request bills of particualrs. Motions are granted only to the following limited extent: Motion No. 38, Nos. 1 and 3 as to Count 1, Nos 1 and 4 as to Count 2, and No. 1 as to Count III, in Motion No. 39, Nos. 1 and 8, in all other respects both motions are denied. Motion No. 40 details info sought concerning Marrapese pursuant to Brady. No. 1-granted, No. 2-granted as to (d.), otherwise denied. No. 3-denied, No. 4, -granted. No. 5-denied. No. 6-granted, except as to place of incarceration. No. 7-granted. No. 8-granted. No. 9-granted, No. 10 thru 14-granted. Motion No. 41 seeks info concerning LaPolla. The govt' response to this motion is sufficient compliance. Motion No. 42 request the opportunity for individual voir dire of veniremen by ea. deft. That motion is denied, subject to reconsideration at the time of ury empanel-ing. Motion No. 43 requests selection of jurors from the New Haven-Bpt. area and for sequestration of jurors. Selection of jurors from outside the jury division in which trial is held would appear to violat this district's jury selection plan. Sequestration is denied, subject reconsideration at the time the jury is empaneled. Finally, Joost has orally moved that he be permitted to participate pro se in the trial of his own defense, along with his appointed attorney. Court will permit Joost to act for himself pro se provided his participation is not duplicative of his counsel s activity and provided further that his decorum and responsiveness to Court rulings is at all times appropriate. Newman, J. m-7/3/75. Copies mailed to all counsel of record.
	Response of the United States to Deft's Request for Selection of Jurors from the New Haven and Bridgeport and For Sequestration Order filed.
7/7	Response of the United States to Deft.s' Motion for Disclosure of Intercepted Wiretap Conversations, filed.
7/7	Court Reporter's Transcript of Proceedings held on Mar. 7, 1974 (Disposition), filed. Sperber, R.
7/8	JOOST: Copy of Petition for Writ of Mandamus sent to Court of Appeals by Robert Joost pro se, filed.
7/11	Additional Response of United States to Motion for Disclosure of Electronic Surveillance, filed by Govt.
7/11	Record on Appeal sent U.S. Courtoof Appeals. Copies of Index sent to Mr. Joost, Attys. Dorsey and Wade. (Appeal of Def. Joost from Denial of Bail Reduction).
7/14	Marshal's return showing service, filed: (2) Subpoena to Produce Document of Object.
7/15	Bill of Particulars, filed by Government
7/15	Response of the United States to Motion for Brady Material, filed by Government.
7/15	Disclosure by the United States of Report of Connecticut State Trooper Raymond Veillette, filed by Govt. (with attachment)
7/15	Compliance of United States To Court Ordered Discovery and Inspection, with sealed attachment, filed by Govt.
7/15	Disclosure of Recorded Statements of Defendants, filed by Govt with attachment.
7/21	GUILLETTE AND JOOST: Motion for Severance, filed by defendants.
7/21	JOOST: Receipt for Record on Appeal (Joost's Appeal from denial of bail reduction) received from Clerk, U.S.C.A. c/a 75-1272.

Atty. Santos moves to have Identification

USA vs David Guillette et als. Criminal H-524

DATE	PROCEEDINGS
1	Letter from Spec. Atty. Coffey to Judge Newman, with attachment (re: Interviews and Statements of Wm Marapese), filed.
7/21	Hearing on Motion For Disclosure of Intercepted Wire Tap Conversations, - Court received oral approval of Rhode Island authorities to make copies of recordings available to all defense counsel - Receipt of Newman, J., filed re 28 reels of tapes received from Lt. Correira - Govt. Witness sworn and testified - Govt. exhibits 1 & 2 marked for identification - Motion for Further Discovery (previously filed) not objected to by Govt., Partial compliance by Govt. by 7/23/75 - Motion of Defts. for Severance (previously filed), Denied - Motion of Defts. Joost and Guillette for Further Discovery, filed - Govt. to inquire re requested information - Motion to Exhume Body of D. LaPolla, filed, Decision reserved - Motion of Deft. Zinni (oral) For Severance, Denied. (Newman, J.)
7/22	Endorsement entered and filed on Defts. Guillette and Joost"s Motion For Disclosure of Intercepted Wiretap Conversations, "7/21/75 Motion Granted as to copies of tapes as explained in open court.(Newman, J./ Copies sent to counsel of record.
7/21	Endorsement entered and filed on Defts Guillette and Joost's Motion For Further Discovery Concerning Daniel LaPolla, "7/21/75 Granted to the extent stated in open court this date."(Newman, J.)m-7/23/75 Copies sent to counsel of record.
7/21	Motion To Reduce Sentence Under Federal Rule of Criminal Procedure 35, re Deft. William Marrapese, filed.(mailed to Judge Murphy 7/23/75
22	Endorsement entered and filed on Motion For Severance, "7/21/75 Motion Denied for reasons stated in open court this date."(Newman,J.)m7/2 Copies sent to counsel of record.
7/22	Application for Writ of Habeas Corpus ad Testificandum and Order (Newman, J.), filed. Two attested copies handed US Marshal for service.
7/22	Response of United States to Motion To Inspect Files of State and Local Law Enforcement Agencies With Respect to the Murder of Daniel LaPolla, filed, along with Affidavit of Atty. Paul E. Coffey.
7/23	RULING ON MOTION FOR EXHUMATION, filed.(Newman,J.)m-7/23/75 "The motion for exhumation of the body of Daniel LaPolla for purposes of obtaining the victim's fingerprints is granted. SO ORDERED." Copies sent to counsel of record.
7/23	RULING ON DISCLOSURE OF BRADY MATERIAL, filed.(Newman,J.)m-7/23/75 "The Court has reviewed the material and concluded that item no. 20 concerning Claude Claudio and paragraph 3 of item no. 45 concerning John Ouimette are sufficiently, though marginally, in the area of disclosure required by Brady v. Maryland, 373 U.S. 83 (1963). The Government is directed to make these items available to the defendants." Copies sent to counsel of record.
7/24	Response of United States To Motion For Further Discovery Concerning Daniel LaPolla and Compliance of United States of Court-Ordered Brady Material, filed.
7/22	Court Reporter's notes of proceedings held on July 21, 1975, filed in New Haven. (Gale, R.)
25	ORDER, filed.(Newman,J.)m-7/25/75 "....the United States is directed to bear the expense of the exhumation." Copies handed Attys. Wade, Santos and Coffey. Copies mailed to Atty. Ferland, Orth.
7/29	Response of United States To Motion For Further Discovery Regarding William Marrapese, filed.

CONTINUED ON PAGE 26

DATE 1975	PROCEEDINGS
7/25	Motion For Return of Exhibits, filed. (Not acted upon)
7/28	Motion For Return of Exhibits, filed.
7/28	Jury Trial - Defendants Request for Voir Dire Exam of Jurors, filed - Defendants Request for Jury Questions, filed - Defendant Zinni's Motion For Restiriction of News Media, filed. Defendant Zinni's Motion To Compel Government Witnesses who composed reports to bring with them all notes, etc. Motion of Deft. Zinni re Order of Proof - Govt. Motion re Return of Exhibits - Granted. Panel of 112 veniremen report and sworn on Voir Dire - Court gives individual Voir Dire and excuses some for cause - Court questions panel as a whole on Voir Dire - Court adjourned at 5:45pm until tomorrow at 10:00am.(Newman,J.)
7/29	Response of United States To Motion For Further Discovery Regarding William Marrapese, filed.
7/29	JURY TRIAL CONTINUES. Panel of 61 veniremen report - Jury of 12 and 4 Alternates drawn, impanelled and sworn - Oral Motion of Defendants to sequester witnessed, Granted - Case agents Weroniak and Petrella may sit at counsel table of Govt. - Oral Motion of Defendants re introducing M-16 Gun Evidence, Denied - Oral Motion of Defendant Bucci to Sever, Denied - Oral Motions of Defendants for daily copy of William Marrapese's testimony, approved, subject to availability of reporters. Opening Statement of Govt. - Opening Statement of Deft. Guillette - Opening statement of Deft. Joost - 2 Govt. Witnesses sworn and testified - Govt. exhibits 1,2,3,6,7,8 & 12, filed - Govt. exhibits 4,5,9,10 &11 marked for identification -Excerpted protion of Exh. 5 made full exhibit. Court approves Exh. #1 for Identification (29 M-16's to be in custody of Govt. with consent of counsel.(Newman,J.)
7/30	Endorsement entered on Motion (Zinni) To Restrict the News Media, "7/28/75 Motion Denied for reasons stated in open count.(Newman,J)7/30/7
	Endorsement entered and filed on Deft. Zinni's Motion To Compel All Government Witnesses Who Composed Reports to Bring With Them All Notes Used in the Preparation of Their Report and Testimony "7/28/75 Motion Denied for reasons stated in open court."(Newman,J.)m-7/30/75
	Endorsement entered on Deft. Zinni's Motion To Suppress, "7/28/75 Motion Dnefed for reasons stated in open court."(Newman,J.) m-7/30/75
	Endorsement entered on Deft. Zinni's Motion Re: Order of Proof, "7/28/75 Motion Denied for reasons stated in open court."(Newman,J.) m-7/30/75
7/29	Copies of above endorsements handed all counsel of record. Receipt from Government signed by Peter R. Casey III, Esq. for all Government Exhibits in Trials #1 and #2, filed.
7/30	Receipt for Defendants' exhibits in Trials #1 & #2 signed by Hubert J. Santos, filed.
7/30	JURY TRIAL CONTINUES - Pand of 16 Jurors report - Defendant Guillette's Motion To Sever, Denied - Govt. Witness, previously sworn resumes stand and continues to testify - Govt. Exhibit #13, filed - Govt. exhibit #9 made full exhibit - Defendant's exhibits A & B, filed. Oral motions of Defendants for Severance and/or For a Mistrial, Denied. Oral motions of Defts. Joost & Guillette for severance or Mistrial renewed, Denied.(Court adjourned at 5:15pm.(Newman,J.)
7/31	JURY TRIAL CONTINUES - 16 Jurors report - Govt. provides material to Court for review before turning over copies to Defendants- All material given to Defense except one memorandum which Court ordered sealed and identified as Item #5 in series of Sealed Documents for review by Circuit Court should it become necessary - Court retained document. - Witness previously sworn, resumed stand and testi-

continued

Deft. Guillette Court opens at 10:15 a.m. 18 jurors present

USA vs DAVID GUILLETTE ET ALS. CRIMINAL H-52-1

75	PROCEEDING
/31cont'd	...fied - Deft. exhibits C thru) marked for identification - Deft. exhibits C & F made full exhibits - 7 Govt. Witnesses, sworn and testified - Govt. exhibits 14 thru 29 marked for identification - Govt. exh. 18, 19, 20, 21, 23, 24, 25 and 26 made full exhibits - Court adjourned at 5:00pm (Newman, J.)
8/1	JURY TRIAL CONTINUES- 16 Jurors report. Court inquired re note to Court from a juror - Counsel advised Court that neither Defs. no Govt. had any objections to jurors continuing on panel - Witness previously sworn, recalled and testified. 2 Govt. witnesses, sworn and testified. Govt. exhibits 30 thru 38 marked for identification - Govt. exhibits 31, 32, 35, 36, 37 & 38 made full exhibits. Defts. Bucci and Zinni orally moved to sever, Denied. Defts. Bucci and Zinni orally move for severance, Denied. Court adjourned at 5:30pm.(Newman, J.)
8/2	JURY TRIAL CONTINUES: 16 Jurors report - Govt. Witness, previously sworn resumed stand and testified - 2 Govt. Witnesses sworn and testified - Govt. exhibits 39, & 41, filed - Govt. exhibits 17 & 27 made full exhibits - Govt. exhibit 40 marked for identification- Defendants' exhibits K thru Q, filed. Court adjourned at 5:25pm.(Newman, J.
8/5	ORDER, filed. (Newman, J.)m-8/5/75 (Instr. to U. S. Marshals Service). Attested copy handed US Marshal at Hartford.
8/5	WILLIAM MARRAPESE - ORDER AMENDING JUDGMENT OF CONVICTION, filed.(Murphy, J.)m-8/6/75 "....is hereby amended so as to read: The defendant, William Marrapese is committed to the custody of the Attorney General or his authorized representatives for a period of six years on each Count numbered I and III and five years on Count II, and that such sentences on each Count be served concurrently with each other." Copies disbursed to Attys. Coffey, Wade, Santos, Zinni, Bucci & Shmukler. Two attested copies handed US Marshal in Hartford.
8/5	JURY TRIAL CONTINUES: 16 Jurors report - Govt. Witness previously sworn, resumed stand and testified - Deft. exhibit R, filed - Court granted Govt's. offer of proof, and Denied Defts.' Motion To Sever - Govt. witness sworn and testified - Govt. exhibit #1 made full exhibit - Paul Orth appears as counsel for Witness Marrapese - Govt. exhibits 42 and 42, filed. Court adjourned at 5:10pm.(Newman, J.)
/5	Disclosure by United States of Money Provided To William Marrapese and/Or Money Expended on Hil Behalf to Family or Relatives, filed.
8/6	JURY TRIAL CONTINUES: 16 Jurors report - William Marrapese previously sworn continued testimony - Atty. Stanford Shmukler appeared for Witness Marrapese - Oral Motions of Joost, Zinni & Bucci for Mistrial. Denied - Defts. Joost & Guillette Requested Jury Instructions re Previous Conviction, filed. Court rejected Offer of Proof by Defts. re allegations concerning Bucci's contacting Housand; Housand's testimony in prior cases and Housand's recantation of testimony. Court adjourned at 5:30pm.(Newman, J.)
8/7m	JURY TRIAL CONTINUES: 16 Jurors report - William Marrapese, Govt. witness, previously sworn resumed stand and testified - Oral Motion of Def. Guillette for Severance, Denied. Deft's. exhibit S, filed. Court adjourned at 5:30pm.(Newman, J.)
8	Waiver of Physician-Client Privilege, filed by Deft. S. Marrapese.
/8	JURY TRIAL CONTINUES: 16 Jurors report - William Marrapese, previously sworn, continued to testify - Defts'. exhibit T, marked for identification - Oral Motion of All Defendants that Govt. agents, including US Attorney, not confer with Mr.Marrapese further until he is no longer a witness, Granted subject to the Court's prior approval of

CONTINUED ON PAGE 27

DATE 1975	PROCEEDINGS
8/8	cont'd...specific subject areas upon request of the Govt. Court adjourned at 3:45pm.(Newman,J.)
8/11	JURY TRIAL CONTINUES: 16 Jurors report - William Harrapeake, previously sworn, continues to testify - Deft's. exhibit U, filed - Govt. Witness sworn and testified - Court exhibits 3, filed.Court adjourned at 5:30pm.(Newman,J.)
8/12	3 Applications for Writs of Habeas Corpus ad Testificandum, filed along with Order. (Newman,J.)m-8/13/75
8/12	JURY TRIAL CONTINUES: Def. Zinni orally moves for mistrial on basis of surprise, Denied - 16 Jurors report - 4 Govt. witnesses sworn and testified - Govt. exhibits 44,45,46 & 47, filed - Govt. exhibit 48 marked for identification later made full exhibit - Defts. Joost and Guillette move to strike testimony of McDonald, Denied - Deft. Joost moves for a mistrial, Denied by Court - Deft. Zinni moves to sever, Denied by Court. Court adjourned at 5:30pm.(Newman,J.)
8/12	CJA 20 executed re Deft. Joost (Clarie,J.) approved IRK), and mailed to A.O. For payment.
8/13	JURY TRIAL CONTINUES: Def. Guillette orally moves to strike testimony of Varcos, Denied - Request of Def. Guillette made for precautionary instruction by Court to Jury upon completion of Varcos testimony - 16 Jurors report - Witness previously sworn resumed stand and testified - Deft's. exhibits V thru Z, filed - 2 Govt. witnesses sworn and testified - Govt. exhibit 50, filed - Court exhibits 4 & 5, filed - Govt. rests at 5:25pm. Jury excused until 11:00 am 8/14/75. (Newman,J.)
8/13	Mandate from US Court of Appeals dated July 13, 1975, filed. "....Ordered that said motion for Leave to Proceed in Forma Pauperis be and It Is Hereby Granted, And The Motion For A Writ of Mandamus be and Hereby Is Denied."(Van Graafeiland, Meskill & Timbers, Js.) Re: Robert Joost.
8/14	JURY TRIAL CONTINUES: All Defts move orally for Judgments of Acquittal, Denied - 16 Jurors report - 3 Deft. Witnesses sworn and testified - Motion of Atty. Wade That testimony of Gerald Woodall directed to means of comprimising alarm systems be SEALED, Motion Granted - Deft's exhibits AA thru KK, filed. Court exhibit #6, filed Govt. exhibits 51 & 52, filed. Court adjourned at 5:40pm.(Newman,J.)
8/15	Application for Writ of Habeas Corpus ad Testificandum re: Housand and Order (Newman, J.), filed. Two attested copies handed U. S. Marshal for service.
"	Application for Writ of Habeas Corpus ad Testificandum re: Sitko and Order (Newman, J.), filed. Two attested copies handed U. S. Marshal for service.
"	JURY TRIAL CONTINUES: Transcript of Excerpt of Testimony of Mr. McDonald, filed. Def. Zinni orally moved to sever - Denied. 16 Jurors report - Gerald Woodall, previously sworn, continues to testify - 3 Deft. Witnesses sworn and testified.*Court adjourned at 5:45 pm. (Newman, J.) * Govt. exhibits 53 thru 56 filed - Govt. exhibit 57 marked for iden. - Govt. exhibit 58 filed - Defs' exhibit LL filed.
8/18	JURY TRIAL CONTINUES: Court denied use of Souca transcript. - Defs' exhibit MM, marked for iden. - Defs' Zinni & Joost orally move to sever, Denied - Defs' Zinni & Joost orally move for mistrial, Denied - Affidavit of P. Casey filed with Court directed to reports by H. C. Luther of 10/16/72 & 9/22/7... Sealed item No. 7 - H. C.

CONTINUED

DATE	PROCEEDINGS
1975	
3/18	cont'd..... Luther report of 9/22/72 - Sealed item No. 3 H. C. Luther report of 10/16/72, excepting portions order to be given Defs' - Defs' move for in camera examination of informant referred to in Casey affidavit, Decision Reserved. - 16 Jurors report - C. Thomas Zinni, previously sworn, resumes testimony - 4 Deft. Witnesses sworn and testified. - Defs' exhibits NN, & OO, filed. - Court adjourned at 5:40 pm. (Newman, J.)
/15	Marshal's executed return, filed (Order Amending Judgment of Conviction- Marrapese)
	Marshal's executed return, filed (Subpoena to Produce Document) Chase
	Marshal's executed return, filed (Subpoena- Warren C. Nessenger)
	Marshal's executed return, filed (Subpoena - Jacob M. Kaplan)
	Marshal's executed return, filed (Subpoena - John J. O'Brien)
9	Marshal's executed return, filed (Subpoena - Mgr. N.E. Tel. Co.) JURY TRIAL CONTINUES: 16 Jurors report - Def's Exh FF marked for Ident. Def's Exh QQ filed. J. Housand sworn and testified, Atty. Max Heiman appeared for Housand. Def. Joose, Guillette & Zinni motion for Immunity order re Housand denied. Def. Joost, Guillette & Zinnis Motions for Severance, Mistrial and Dismissal are denied. A. Varcos, Previously sworn, continued to testify. P. Guillette Def's witness sworn and testified Govt. Exh 59 marked for Ident. D. Guillette sworn and testified. Def. Exh. RR and SS filed. Court adjourned at 4:35 p.m. (Newman, J.)
0	JURY TRIAL CONTINUES: 16 Jurors report. Def. Guillette previous sworn continues testimony. H. Fitssimmons sworn and testified for Def. Def. Exh. TT, UU. VV. and WW filed. J. Wade, sworn and Testified for Def. Def. Exh XX filed. R. Joost Sworn and testified. Court Exh. 7, filed. Court adjourned at 5:05 p.m. (Newman, J.)
	JURY TRIAL CONTINUES: 16 Jurors report - Def. Exh YY marked for Ident. Govt. Exh. 60 marked for Ident. R. Joost, previously sworn continues testimony. Govt. Exh 61 filed. Motion of Def. Zinni for mistrial Denied. S. Petrella previously sworn resumes stand and testified. Court Adjourned at 4:45 p.m. (Newman, J.)
	JURY TRIAL CONTINUES [illegible] Trial continues- Jury not present. Govt request to charge filed. Motion of Joost and Guillette for Judgment of Acquittal - Denied. Motion of Joost to dismiss Counts 2 & 3- Denied. Motion of Zinni to expunge evidence - Denied. Motion of Bucci and Zinni for Acquittal re Rule 29(b) Dec. Res. Issue to go to Jury Requests to charge filed by Defs. Joost and Guillette. Adj. 1:20 p.m. (Newman
	JURY TRIAL CONTINUES 16 jurors report. All Four Defendants rest. Govt Summation 10:09 a.m. to 11:07 a.m. Def. Joost Summation 11:16 a.m. to 12:18 p.m.; Def. Guillette summation 12:30 p.m. to 1:20 p.m. Def. Zinni Summation 2:20 p.m. to 3:15 p.m. Def. Bucci Summation 3:25 p.m. to 4:10 p.m. Govt. rebuttal 4:25 p.m. to 5:04 p.m. Def's Joost, Guillette and Zinnig move for mistrial- Denied. Court Adjourned at 5:30 p.m. (Newman, J.)
	JURY TRIAL CONTINUES Counsel approve of Verdict Form - 16 jurs report. Def. exh. ZZ filed. Jury Charge 10:10 am to 11:35 am. No exceptions to Charge by Govt. Def. Joost, Guillette and Zinni took exceptions to charge. Def. Bucci took no exceptions to charge. Exhibits, Indictments H-524 and H-75-39 given to the jury at 11:50 am and jury commenced its deliberations. Alternates excused by Court. Court exhibits 8 thru 14 filed. Court Adjourned at 5:25 pm. (Newman, J.)
	JURY TRIAL CONTINUES: 12 Jurors report and continue their deliberations. Court exhibits 15 thru 18, filed. Order of Court re: Transportation for Jurors to be Provided by Marshal, filed. (Newman, J.)

DATE 1975	PROCEEDINGS
8/27	cont'd...to 8/28, 2:30 P.m. Jury called into Court and excused until 9:30 a.m. 8/28/75. Court Adjourned at 9:35 p.m. (Newman, J.)
8/20	Court Reporter's Notes of Proceedings held on April 25, and May 5, 1975, filed in Hartford. (Sperber, R.)
8/28	JURY TRIAL CONTINUES: 12 Jurors report at 9:40am and continue their deliberations - At 10:45am, jury called into courtoom and portions of Marrapese testimony read by reporter re Def. Zinni per inquiry of Court exh. 18 - At 3:50pm Court Exh 20 note from jury re three questions concerning testimony - At 4:30pm Court exh 21 note from juror re other than May 8th meeting - At 5:15pm Jury called into courtroom and testimony read re Court Exh 20 and Court's answer to Court Exh. 21 - At 5:30pm Jury note re phone calls Court Exh. 22 - At 6:25pm Jury note re adjourning, Court exh 23. Jury excused at 6:30pm until 9:30am on Aug. 29th. Court adjourned at 6:35pm. (Newman, J.)
8/29	JURY TRIAL CONTINUES 12 Jurors report at 9:55am and continue deliberations - Court exh 24, Note from Juror Mazzawy re Dr. Sullivan's testimony - after which jury returned to its deliberations - At 4:50pm note from Jury requesting to adjourn and return on Tues. Sept. 2, Now court exh. 25 - Jury called into Court at 5:35pm. Court exh 26, Note from Jury re returning 9/2/75 - Jury excused at 6:05pm until 9:30am Tuesday, Sept. 2, 1975. Defs. Joost and Guillette move for Mistrial, Motion Denied. Def. Joost moves for reduction of Bond or for furlough, Denied. Court adjourned at 6:15pm. (Newman, J.)
9/2	JURY TRIAL CONTINUES: - 12 Jurors report - Jury called into Courtroom and questioned by Court re [illegible]-discussion of case over weekend no response by jury and Court had jury return to jury room to continue its deliberations - Note from Jury at 4:50pm by Foreman Mazzawy - Jury called into Courtroom at 5:08pm Court exh. 27, Note from Mr. Mazzawy - At 6:40pm, note from Jury re adjourning now Court exh. 28. Jury called into Courtroom and excused at [illegible]:45pm. Court adjourned at 6:45pm. (Newman,
9/3	JURY TRIAL CONTINUES: 12 Jurors report and continue to deliberate - Jury called into Courtroom at 9:45am and advised that no books etc as requested by one juror would be allowed in Jury Room - any questions re meaning of words, etc, should be directed to Court - At 9:52am Jury continues its deliberations - At 11:25am note from Jury requesting Bucci cross of Marrapese be read - Jury called into Courtroom at 11:35am and reporter read requested material - Court exh. 29, note from Jury re reading of Bucci's cross examination of Marrapese - At 1:50pm, note from Jury re "Decision", Court exh. 30, Note from Jury re "Decision" - Jury called into Courtroom at 2:25pm - Jury hands "Verdict Form" to Court at 2:30pm by its foreman, Robert Mazzawy - VERDICT- Deft. Guillette, counts 1, 2 & 3 no verdict - Deft. Joost, count 1, no verdict, counts 2 & 3, not guilty Deft. Zinni, count 1, no verdict, counts 2 & 3, not guilty Deft. Bucci, count 1, Not guilty Jury not polled - Verdict verified and ordered recorded - Court declares a Mistrial as to Counts having finding of No Verdict without prejudice to Def's. rights to file motions. Court grants 20 days for motions by Defs. Defs. Joost's and Guillette's Motion ForReduction of Bond, Denied Court ordered return of Govt. exhibits 1 and 37 to Govt. for custody thereof, and Def. Exhibit K to Defs. Joost & Guillette attorneys for custody thereof. Court filed Sealed Documents 1 thru 9. Court adjourned at 5:05pm. (Newman, J.)
9/4	A True Copy of Mandate from USCA dated August 27, 1975 dismiss-

CONTINUED

DATE 1975	PROCEEDINGS
9/4cont	t'd....ing appeal of Defendant-Appellant Joost for failure to file brief.
	filed.(Fusaro, Clerk) Copy handed Atty. Peter Casey for the Govt.
8/8	Record on appeal (Joost) returned and filed . Receipt sent.
8/27	True Copy of Request of out-of-district subpoena, filed.
9/22	Marshal's executed returns, filed. (3 Appl. for Writ of H.C.)
	Motion of Defendant, Robert Joost, for Judgment of Acquital
	Pursuant to Rule 29(C) of the Federal Rules of Criminal Procedure, Filed
9/23	Motion for Judgment of Acquital and to Dismiss re Joost and
	Guillette, filed.
9/23	Motion of Defendant, David Guillette, for Judgment ofAcquital
	Pursuant to Rule 29(C) of the Federal Rules of Criminal Procedure, filed.
9/23	Transcript of Proceedings held on February 10 and 11, 1975,
	filed in Hartford. (Sperber, R.)
9/25	Designation of District Judge For Service In Another District
	Within His Circuit re Honorable Lloyd F. MacMahon, filed. Copies
	mailed to Attys. Wade, Santos, Zinni and copy handed Atty. Coffey.
9/25	Transcript of Proceedings held on February 11, 13 and 14, 1975,
	filed in Hartford. (Sperber, R.)
9/24	Marshal's Executed Returns filed. (Two Writs of Habeas Corpus
	Ad Testificandum.)
9/26	Memorandum in Support of Defendant's Motion For Acquittal Pur-
	suant to Rule 29(b), filed.
10/15	DEFTS. GUILLETTE AND JOOST- The following motions, filed:
—	1. Request Pursuant to Standing Order
	2. Motion For Change of Venue
	3. Motion To Dismiss
	4. Motion To Dismiss Count I
	5. Motion To Dismiss Count I
	6. Motion To Dismiss Because of Wilful Non-Disclosure of Brady Material By The Prosecuting Attorney
	7. Motion To Dismiss Indictment Because of the Failure of the Government To Present All Relevant Evidence to the Grand Jury
	8. Motion To Dismiss Indictment Obtained Through the Testimony of A Perjurer
	9. Motion To Dismiss Indictment Because of Misconduct of a Government Agent To Wit: John A. Housand
—	10. Motion To Suppress
	11. Motion To Postpone Trial Until After Trial of John Anthony Housand
	12. Motion of David Guillette and Robert Joost For Bill of Particulars
	13. Motion For Disclosure of Information Concerning Daniel LaPolla
—	14. Motion By Defendants David Guillette, Robert Joost, For Discovery and Inspection
—	15. Request For Inquiry Re Electronic Surveillance
	16. Motion Re Anthony Souca Informant
	17. Motion of The Defendants To Be Furnished With Statements of Promises, Rewards or Inducements
—	18. Motion For Brady Material Concerning Informants or Cooperating Individuals
—	19. Motion For Copy of Statements
	20. Motion of the Defendants For the Production of Police Department Reports
	21. Motion By Defendans, David Guillette and Robert Joost, For Production at Trial
	22. Motion Requiring Special Attorney Coffey to Inspect and Examine Other Investigatory Files and Personnel

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10/15 cont'd. 23. Motion To Require Government to File Responses With the Clerk
24. Motion For Individual Examination of Prospective Jurors and For Additional Preemptory Challenges

10/15 Robert JOOST - The following motions, filed:
1. Motion For Severance by Defendant, Robert Joost
2. Motion For Change of Venue by Defendant Robert Joost
3. Motion For Severance by Defendant Robert Joost
4. Motion To Dismiss Death Resulting Aspect of Count I

10/16 Response of United States To Motions By Defendants Joost, Guillette, and Zinni under Rule 29(b) For Judgments of Acquittal, filed.

10/9 CJA 21 executed (Newman, J.) and mailed to A.O. for payment.

10/16 Disclosure of Statement By Robert Joost, filed by Govt.

10/17 Motion To Sever Defendant Guillette, filed.

10/17 RULING ON MOTIONS FOR JUDGMENT OF ACQUITTAL, filed. (Newman, J.) m-10/21/75 "The motions for judgment of acquittal as to all three defendants are denied. The Affidavit submitted by counsel for Joost and Guillette may be sealed for inspection only by a reviewing court." Copies sent to all counsel of record.

10/17 Sealed Document No. 9 (Affidavits of Attorneys Wade and Santos in support of Motion for Judgment of Acquittal, filed.

10/20 Nicholas Zinni - Motion for Change of Venue by Defendant Nicholas D. Zinni and Motion For Severance by Defendant Nicholas D. Zinni, filed.

10/22 NICHOLAS D. ZINNI - The following motions, filed:
1. Motion For Brady Material Concerning Informants or Cooperating individuals
2. Motion To Dismiss Because of Willful Non-Disclosure of Brady Material By The Prosecuting Attorney
3. Motion By Defendant, Nicholas D. Zinni, For Discovery and Inspection
4. Motion To Dismiss Indictment Because of Misconduct of a Government Agent to Wit: John A. Housand
5. Motion For Disclosure of Information Concerning Daniel LaPolla
6. Motion of Nicholas D. Zinni For Bill of Particulars
7. Motion To Dismiss Death Resulting Aspect of Count I
7a. Motion For Change of Venue
8. Motion To Sever
9. Motion To Postpone Trial Until After Trial of John Anthony Housand
10. Motion For Individual Examination of Prospective Jurors and For Additional Preemptory Challenges
11. Motion For Severance
12. Motion For Severence
13. Motion Re Anthony Souca, Informant
14 Motion To Dismiss Indictment Obtained Through the Testimony of a Perjurer
15. Request Pursuant to Standing Order
16. Motion of the Defendant To Be Furnished With Statements of Promises, Rewards or Inducements
17. Motion To Suppress
18. Request For Inquiry re Electronic Surveillance
19. Motion To Require Government to File Responses With Clerk
20. Motion Requiring Special Attorney Coffey To Inspect and Examine Other Investigatory Files and Personnell
21. Motion By Defendant, Nicholas D. Zinni, For Production at Trial
22. Motion of the Defendants For the Production of Police Department Reports.

CONTINUED

DATE 1975	PROCEEDINGS
10/22	cont'd. 23. Motion To Dismiss Indictment Because of the Failure of the Government To Present All Relevant Evidence to the Grand Jury
	24. Motion To Dismiss Count I
	25. Motion To Dismiss
	26. Motion To Dismiss Count I
	27. Motion For Copy of Statements
10/22*	Notice of Appeal, filed re Nicholas Zinni(Ruling Mo. for Acquittal).
10/22	Certified copy of Notice of Appeal and Docket Entries mailed to USCA.
10/22	Copies of Notice of Appeal mailed to counsel of record.
10/23	Motion For Severance by Defendant Nicholas D. Zinni, filed.
10/23	Docket mailed to Bridgeport Office.
10/22*	HEARING on Motions addressed to Court: Court opens 2:05 p.m. Atty. Wade makes the following Motions on behalf of Deft. JOOST and Atty. Santos joins in the Motions on behalf of Deft. GUILLETT: Motion for Request pursuant to Standing Order - Court grants motion. Motion for Change of Venue - Court denies motion. Motion for Change of Venue by Joost only - Court denies motion. Motion for Bill of Particulars - Court denies motion but grants the same to extent that the Gov't. has already complied. Motion for Dismissal as to Count 1 - Court denies motion. Motion to Dismiss for Wilful Non Disclosure of Brady Material - Court denies motion. Motion for Claim of Misconduct by Housand - Court denies motion. Motion to Dismiss for Failure to Present All Relevant Material to the Grand Jury - Court denies motion. Motion to Dismiss Indictment Because of Perjury - Court denies motion. Motion to Postpone this Trial Until After the Trial of John Housand - Court denies motion. Motion for Bill of Particulars as to Any New Material - Court grantsmotion. Motion to Supress Certain Evidence - Court denies motion. Motion for Particularized Brady Material Court denies motion. Motion for Information According to Informant Anthony Souca - Court denies motion. Motion for All Promises, Inducements Court grants motion. Motion for Brady Material concerning Informants - Court denies motion. Motion for Tax Returns of Marrapese and Whether Tax Investigation Was Begun Against Him.- Court denies motion. Memorandum of United States on Evidentiary/Legal Issues Likely to Arise at Trial filed by Atty. Coffey. Motion for Brady Material Concerning Mr. Cookish - Court grants motion. Motion for Disclosure on the William Marrapese Trust - Court denies motion. The following Motions are indicated by Atty. Wade as "New Motions": Motion for Severance of Mr. Joost from Mr. Guillett Trial.- Court reserves decision. Motion for Judgment of Acquittal as to Joost - Court denies motion. Motion to Sever Guillettes Trial from Joost and Zinni - Court denies motion. Atty. Ferland adopts all the above motion on behalf of Deft. ZINNI.- Court denies all motions. Atty. Ferland makes the following additional Motions: Motion to Postpone the Trial on Behalf of Zinni.- Court denies motion. Motion for Severance as to Zinni - Court denies motion. Motion for Change of Venue as to Zinni - Court denies motion. Gov't. files Request to Charge. All counsel file Jury Questions. Atty. Wade makes the following additional Motions: Motion for 3400 Materia under the Jenks Act.--Court grants motion. Motion to Have Government Atty. Check Other Investigatory Files as a Continuing Obligation - Court denies motion. Motion to Have Government Atty. Check Into the Break in August in Rhode Island Concerning Mr. Marrapese's Interest in the Safety Deposit Boxes - Court denies motion. Motion to Have the Gov't. File Responses With the Clerk of Court - Court grants motion. Motion to Have an Individual Voire Dire. - Motion denied by the Court. Court adjourns at 5:25 p.m. until Friday, Oct. 24, 197 at 10:00 a.m. (DeRosa, D.C., Beecher, R.) MacMahon, J., Sitting by Designation. M-10/29/75

DATE	PROCEEDINGS
1975	
10/23	DEFTS. GUILLETTE and JOOST - Endorsements filed and entered on following Motions: Motion of the Defendants to be Furnished with Statements of Promises, Rewards or Inducements - "10/23/75 Motion granted. Government to comply with its continuing obligation to furnish defendants with Brady material. So Ordered."(MacMahon, J.) M-11/11/75 Motion for Copy of Statements - "10/23/75 Motion granted. So Ordered." (MacMahon,J.) M-11/11/75 Request for Inquiry Re Electronic Surveillance - "10/23/75 Motion denied except to extent that Government has already consented. So Ordered." (MacMahon, J.) M-11/11/75 Motion by Defendants David Guillette, Robert Joost, for Discovery and Inspection - "10/23/75 Motion denied except to extent that Government has already supplied particulars sought. So Ordered." (MacMahon, J.) M-11/11/75 Motion to Suppress - "10/23/75 Motion denied. So Ordered." (MacMahon, J.) M-11/11/75 Copies handed Attys. Santos & Wade, mailed to Attys. Zinni, Ferland and Coffey.

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DATE 1975	PROCEEDINGS
10/24	Hospital Record of James French - Mount Sinai Hospital, Hartford, Conn., filed.
10	JURY TRIAL COMMENCES - Court opens at 10:25 a.m. Panel of 79 veniremen report and sworn on Voir Dire. Court gives individual Voir Dire and excuses some jurors for cause. Court questions panel as a whole on Voir Dire. 12 jurors and 6 alternates are sworn. Balance of panel excused until notified by Clerk's Office. Counsel make opening arguments to jury. Govt. witness, William Marrapese, sworn and testifies Govt. Ex. #62 marked for Identification. Jury excused for lunch at 1:00 p.m. In absence of jury, Atty. Zinni and Mr. Joost make motions for a Mis-trial and renew Motions for Severance. Court denies both motions. Court recess from 1:05 p.m. to 2:15 p.m. In the absence of the jury, Atty. Santos makes a Motion for Sequestration of witnesses and makes a Motion for 3500 Material. Court reserves decision. Jury panel returns to the Courtroom. Witness, Marrapese, previously sworn, resumes the stand and testifies. Govt. Ex. #1 and #3 marked for indentification. Govt. Ex. #3 filed as full exhibit. Court recess from 3:15 to 3:30 p.m. In the absence of the jury, Atty. Coffey makes a proffer of Proff as to Mr. Petriarch. Court allows the offer. Jury panel returns to the Court room. Witness Marrapese, previously sworn, resumes the stand and testifies. Atty. Zinni moves for a Mis-trial on the Court's allowance of the offer. Court denies said motion. Govt. Exs. #42 and #43, filed. Jury excused for the day at 4:42 p.m. Court adjourns at 4:45 p.m. until Tuesday, Oct. 28, 1975 at 10:00 a.m. MacMahon, J., Sitting by Designation. (DeRosa, D. C., Beecher, R.) M-10/29/75
10/24	Receipt from Defense counsel James Wade acknowledging return of full Exs. A through ZZ for reintroduction in this trial held in Bridgeport, filed.
10/28	DEFTS. GUILLETTE AND JOOST - Requested Jury Instruction Prior to Cross-Examination of Marrapese; Offer of Proof Re: Marrapese Defense; Offer of Proof Re: Cross-Examination of Marrapese Concerning Recantation of John Anthony Housand and Presentation of Evidence Concerning Said Recantation, filed.
10/28	DEFT. GUILLETTE - Offer of Proof Re: Testimony of C. Thomas Zinni, filed.
10/28	JURY TRIAL CONTINUES: Court opens at 10:35 a.m. Atty. Ferland files Requested Jury Charge. All 18 jurors present. Witness Marrapese, previously sworn resumes stand and testifies. Motion for Severance because of Armondo Testimony made by Atty. Ferland and joined in by Mr. Joost. Court denies motion. Govt. Ex. #62 filed as full exhibit. Cross examination by Atty. Santos begins at 10:43 a.m. Court recess 11:40 to 11:59 a.m. Affidavit of Robert Joost, filed. Witness Marrapese previously sworn, resumes the stand for continued cross-examination and testifies. Deft's. Ex. "AAA" marked for identification. Deft. Ex. "BBB" marked for identification. Court recess from 1:00 p.m. to 2:15 p.m. Witness Marrapese, previously sworn, resumes stand for continued cross-examination and testifies. Jury excused for recess at 3:00 p.m. In the absence of jury, Atty. Santos makes an Offer of Proof for Admissibility of the Transcript of March 31, 1972, of 62 Conversation Between Marrapese and LaPolla. Court denies the admissibility of the transcript. Court recess from 3:10 to 3:25 p.m. Witness Marrapese, previously sworn, resumes stand for continued cross-examination and testifies. Deft. Ex. "U", filed. Deft. Ex. "Y" marked for identification. Atty. Santos ends cross-examination on behalf of Guillette at 3:40 p.m. At 3:41 p.m.

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DATE 1975	PROCEEDINGS
10/28 (cont.)	Mr. Joost begins cross-examination of Witness Marrapese. Deft. Ex. "S", filed. Mr. Joost's cross-examination ends at 4:35 p.m. Court excuses jury at 4:36 p.m. In absence of jury, Joost makes an offer of proof that Mr. LaPolla knew other underworld criminals. Court disallows the offer. Mr. Joost makes Motion to Have Atty. Wade Take the Stand. Court denies the motion. Atty. Ferland renews his Motion for Severance on behalf of Zinni and Atty. Santos joins in the Motion on behalf of Guillette. Court denies motion. Atty. Santos makes an offer of proof that the May 8, 1972 meeting never took place. Court disallows the offer. Atty. Santos makes an offer of proof that he be allowed to go into the question of Mr. Marrapese's alleged ownership of 3 Safety Deposit boxes in the Bonded Vault Co. in Providence, R. I., which were burglarized in September of 1975. Court disallows the offer. Court adjourns at 4:55 p.m. until tomorrow Oct. 29, 1975 at 10:00 a.m. MacMahon, J., Sitting by Designation. (Beecher, R., DeRosa, D. C.) M-10/28/75
10/28	Endorsments entered and filed on the following Motions: DEFTS. GUILLETTE and JOOST - 1. Motion for Change of Venue, "10/20/75 The within motion is in all respects denied. So Ordered."(MacMahon, J)* M-10/31/75 *of the S.D. of N.Y. sitting by designation. 2. Motion to Dismiss, "10/20/75 Motion denied. So Ordered." (MacMahon, J M-10/31/75 3. Motion to Dismiss Count I, "10/20/75 The within motion is in all respects denied. So Ordered." (MacMahon, J.) M-10/31/75 4. Motion to Dismiss Count I, "10/20/75 The within motion is in all respects denied. So Ordered." (MacMahon, J.) M-10/31/75 5. Motion to Dismiss Because of Wilful Non-Disclosure of Brady Material by the Prosecuting Attorney, "10/22/75 Motion denied for reasons stated in open court, following argument. So Ordered." (MacMahon, J.) M-10/31 6. Motion to Dismiss Indictment Because of the Failure of the Government to Present All Relevant Evidence to the Grand Jury, "10/20/75 The within motion is in all respects denied. So Ordered." (MacMahon, J.) M-10/31/75 7. Motion to Dismiss Indictment Obtained through the Testimony of a Perjurer, "10/20/75 The within motion is in all respects denied. So Ordered." (MacMahon, J.) M-10/31/75 8. Motion to Dismiss Indictment Because of Misconduct of a Government Agent to Wit: John A. Housand, "10/20/75 The within motion is denied in all respects. So Ordered." (MacMahon, J.) M-10/31/75 9. Motion to Postpone Trial Until After Trial of John Anthony Housand, "Motion denied for reasons stated in open court following argument. So Ordered." (MacMahon, J.) M-10/31/ 10. Motion of David Guillette and Robert Joost for Bill of Particulars "10/22/75 For reasons stated in open court following argument, granted to the extent the government has already complied, otherwise denied So Ordered." (MacMahon, J.) M-10/31/75 11. Motion for Disclosure of Information Concerning Daniel LaPolla, "10/22/75 For reasons stated in open court following argument motion denied, but the government is ordered to adhere to its continuing obligation under Brady v. Maryland. So Ordered. (MacMahon, J.) M-10/31/75 12. Motion Re Anthony Souca Informant, "10/22/75 Motion denied following argument and transcript in camera testimony. So Ordered. (MacMahon, J.) M-10/31/75 13. Motion for Brady Material Concerning Informants or Cooperating Individuals, "10/22/75 Motion denied following argument but the government is directed to adhere to its continuing obligation under Brady v. Maryland. So Ordered. (MacMahon, J.) M-10/31/75 14. Motion of the Defendants for the Production of Police Department Reports, "10/22/75 For reasons stated in open court following argument

DATE 1975	PROCEEDINGS
10/28	(cont.) motion denied. However the government is to adhere to its continuing obligation under Brady v. Maryland. So Ordered. (MacMahon,J.) M-10/31/75 15. Motion by Defendants, David Guillette and Robert Joost, for Production at Trial, "10/22/75 Following Argument, the within motion is granted - but conditional on the extent to which the Court reporters can make available transcripts from the trial before Judge Newman. So Ordered." (MacMahon,J.) M-10/31/75 16. Motion Requiring Special Attorney Coffey to Inspect and Examine Other Investigatory Files and Personnel, "10/22/75 For reasons stated in open court following argument, the within motion is denied as to government's continuing obligation to inspect investigatory files and personnel, but if any Brady material comes into the possession of the government, it must be disclosed So Ordered. (MacMahon, J.) M-10/31/75 17. Motion to Require Government to File Responses with the Clerk, "10/22/75 Motion denied for reasons stated in open court following argument but the government is directed to place on the record a description of all material given to defense counsel So Ordered. (MacMahon, J.) M-10/31/75 18. Motion for Individual Examination of Prospective Jurors and for Additional Preemptory Challenges "10/22/75 Motion denied for reasons stated in open court following argument. So Ordered." (MacMahon, J.) M-10/31/75
10/28	DEFT. JOOST - 1. Motion for Severance By Defendant Robert Joost, "10/22/7 For reasons stated in open court following argument the motion is denied without prejudice to renewal at the proper time. The government is directed not to introduce Marrapese's testimony regarding the Armando's conversation without first seeking a ruling as to whether such testimony would cause a severance. So Ordered." (MacMahon, J.) M-10/31/75 2. Motion for Change of Venue by Defendant Robert Joost, "10/22/75 Motion denied for reasons stated in open court following argument. So Ordered." (MacMahon, J.) M-10/31/75 3. Motion for Severance By Defendant Robert Joost, "Motion denied for reasons stated in open court following argument. So Ordered." (MacMahon, J.) M-10/31/75 4. Motion to Dismiss Death Resulting Aspect of Count I, "10/22/75 Motion denied for reasons stated in open court following argument. So Ordered. (MacMahon,J. M-10/31/75 DEFT. GUILLETTE - Motion to Sever Defendant Guillette, "10/22/75 For reasons stated in open court following argument denied without prejudice to renew at any time. So Ordered." (MacMahon, J.) M-10/31/75 DEFTS. GUILLETTE and JOOST - Motion for Brady Material Concerning Dennis R. Cookish, "10/24/75 For reasons stated in open court following argument granted to the extent the government consents, otherwise denied. So Ordered." (MacMahon, J.) M-10/31/75 DEFT. ZINNI - 1. Motion for Change of Venue by Defendant Nicholas D. Zinni, "10/22/75 Motion denied for reasons stated in open court following argument. So Ordered." (MacMahon, J.) M-10/31/75 2. Motion for Severance by Defendant Nicholas D. Zinni, "10/22/75 Motion denied for reasons stated in open court following argument. So Ordered." (MacMahon, J.) M-10/31/7 3. Motion for Severance by Defendant Nicholas D. Zinni, "10/ 3/75 Motion denied. So Ordered." (MacMahon, J.) M-10/31/75 Copies to counsel
10/28	Receipt from Government (S.A., ATF) acknowledging return of all full exhibits - Ex. #1 through #61 for reintroduction in this trial held in Bridgeport, filed.
10/29	Request for Out of District Subpoenas, filed by Atty. Santos. SO ORDERED. (MacMahon, J.)
10/29	Acknowledgment of receipt of certified copies of Notice of Appeal and Docket Entries re: Deft. Zinni, received from Clerk, U. S. Court of Appeals.

DATE 1975	PROCEEDINGS
10/29	JURY TRIAL CONTINUES: Conference held in chambers from 10:10 a.m. to 11:10 a.m. Atty. Santos files a Request for Out of District Subpoen. Court grants Request. Court opens at 11:12 a.m. 18 jurors present. Witness Marrapese, previously sworn, resumes stand for continued cross-examination by Mr. Joost and testifies. Govt. witness, Edward M. Marchetti, sworn and testifies. Govt. Ex. #2 marked for identification. Govt. Ex. #2, filed as full exhibit. Govt. Ex.#1 filed as full exhibit Govt. witness, Raymond Poirier, sworn and testifies. Govt. witness, Gregory Way, sworn and testifies. Atty. Ferland makes Motion for Severance. Court denies motion. Govt. Exs. #15, 7, 6, 4, and 5, filed. Govt. witness John A. Mulligan, sworn and testifies. Govt. Exs. #27 and 28 marked for identification. Govt. Exs. #27 and 28 filed as full exhibits. Govt. Ex. #22, filed. Court recess from 12:07 to 12:21 p.m. Witness Mulligan, previously sworn, resumes stand and testifies. Cross-examination by Atty. Santos begins at 12:26 p.m. Deft's. Exs. "F", "G", and "H" marked for identification. Court excuses jury at 1:00 p.m. Atty. Ferland, in ausence of jury, makes Motion for Severance as to Zinni. Court denies motion. Court recess from 1:02 to 2:30 p.m. Witness Mulligan, previously sworn, resumes stand for continued cross-examinati and testifies. Deft's. Exs. F, G, and H, filed as full exhibits. Mr. Joost begins a pro se cross examination of Mr. Mulligan at 2:40 p.m. Govt. witness, Roy Stockweather, sworn and testifies. Govt. Exs. 23, 2. 25 and 26 marked for identification. Govt. Exs. 23, 24, 25,&26 filed a full exhibits. Govt. witness, James Karolides, sworn and testifies. Govt. Ex. 29 marked for identification. Govt. Exs. 18, 19, 20, and 21 marked for identification. Govt. Exs. 18, 19, 20, and 21 filed as full exhibits. Govt. Ex. 17 marked for Identification. Govt. witness, Rich Weronik, sworn and testifies. Govt. Ex. 32 filed. Govt. Exs. 33, 31, and 34 marked for identification. Court recess from 3:25 to 3:42 p.m. Witness Weronik, previously sworn resumes the stand. Govt. Ex. 8 filed. Govt. Exs. 37 and 38 marked for identification. Govt. Ex. 38 filed as exhibit. Govt. Exs. 35 and 36 marked for identification. Govt. Exs. 3 and 36 filed. Cross examination of Mr. Weronik begun by Atty. Santos a 4:25 p.m. Defts. Exs. L, P, M, and O, filed. Jury excused at 4:53 p.m Atty. Wade makes a Motion for Severance and for Mis-Trial and Atty. Fer joins in the motions. Court denies both motions. Court adjourns at 5: p.m. until tomorrow, Oct. 30, 1975 at 10:00 a.m. (MacMahon, J., Sittin by Designation) (Beecher, R., DeRosa, D. C.) M-10/31/75
10/30	JURY TRIAL CONTINUES: Court opens at 10:00 a.m. Atty. Santos fil an additional Request for Out of District Subpoenas. Court grants requ 18 jurors present. Witness Weronik, previously sworn, resumes stand fo continued cross-examination by Atty. Santos and testifies. Deft's. Ex. K, filed. Cross- examination by Mr. Joost begun at 10:20 to 10:32 a.m. Govt. witness, Elliot Gross, sworn and testifies. Govt. witness, Ellio Byall, sworn and testifies. Govt. Exs. 30, 40 and 34 marked for identi fication. Court recess from 11:40 to 11:50 a.m. Witness Byall, previo sworn, resumes stand and testifies. Deft's. Ex. CCC marked for identi tion. Govt. witness, Albert W. Gleason, sworn and testifies. Jury excu for lunch at 1:00 p.m. Court recess from 1:02 to 2:15 p.m. Witness Gleason, previously sworn, resumes stand and testifies. Govt. Ex. 41, filed. Court recess from 2:40 to 2:46 p.m. Witness Gleason, previousl sworn, resumes stand and testifies. Govt. witness, Ann Kiley, sworn an testifies. Govt. witness, Raymond V. LaPorte, sworn and testifies. Court recess from 3:30 to 3:40 p.m. Govt. witness, William Smith, swor

DATE 1975	PROCEEDINGS
10/30	(cont.) and testifies. Jury excused at 4:35 p.m. In absence of Jury, Atty. Santos moves to have Identification Ex. Y admitted as full exhibit for defendant. Court denies motion. Mr. Ferland moves for a Severance again. Court denies motion. Court Exs. 1 and 2 filed. Court adjourns at 4:55 p.m. until tomorrow Oct. 31, 1975 at 10:00 a.m. (MacMahon, J., Sitting by Designation.) (Beecher, R., DeRosa, D. C.) M-10/31/75
10/30	CJA 21 Appointing Gerald Gale, Court Reporter, to provide transcript of testimony of persons listed in Schedule A., said transcript needed for these defendants for re-trial of this case, executed and filed. * Copies mailed Mr. Gale and Administrative Office.*(MacMahon, J.)
10/30	Five Applications for Writs of Habeas Corpus ad Testificandum (John A. Housand, William Moore, John Klauzenberg, Edward Z. Sitko and Frank Klein) filed and Order entered. (MacMahon, J.) M-10/30/75 Two attested copies of each Writ and Order handed Marshal for service.
10/31	JURY TRIAL CONTINUES: Court opens at 10:15 a.m. Transcript Excerpts from Direct Examination by Mr. Coffey of William Marrapese taken on October 24, 1975, filed. Witness Smith, previously sworn, resumes the stand and testifies on cross-examination. Defts. Ex. DDD marked for identification. Govt. witness, Salvatore Petrella, sworn and testifies. Govt. Ex. 11 marked for Identification. Govt. Ex. 12, filed. Jury excused for recess at 11:15 a.m. Court recess from 11:16 to 11:25 a.m. Govt. Exs. 17, 18, 19, 20, 21, 31, 32, 33 37, 39 and 62 filed. Witness Marrapese, previously sworn, resumes stand and testifies on cross-examination. Jury excused at 12:53 and Court adjourns until 2:15 p.m. Govt. witness, Gail Melikian, sworn and testifies. Govt. Witness, Rodger Williams, sworn and testifies. Govt. Ex. 50 marked for Identification. Govt. rests at 3:00 p.m. Atty. Zinni makes a Motion to Strike all the testimony of Mr. Williams, makes a Motion for Severance and a Motion For A Mis-Trial. Court denies all three motions. Deft. witness, Frank Sullivan, sworn and testifies nunc pro tunc. Deft. Ex. QQ marked for identification. Court recess from 3:35 to 3:50 p.m. Witness Sullivan, previously sworn, resumes stand and testifies. Deft. witness, Philip Iannetta, sworn and testifies. Deft. Ex.OO,filed. Deft. Exs. NN and EEE, filed. Deft. witness, Patricia Guillette, sworn and testifies. Deft. Ex. RR, marked for identification. Deft. Exs. SS and UU, filed. Govt. Ex. 59 filed. Jury excused at 4:55 p.m. Atty. Santos makes Motion for Acquittal of Guillette. Court denies motion. Atty. Wade makes Motion for Acquittal of Joost because no pria facie case established and for Acquittal of the death resulting aspect of Count 1. Court denies the motions. Atty. Zinni adopts the Motions of Atty. Wade. Court denies the motions. Govt. Motion under Rule 16C for the Reports of defendant's experts. Court grants motion. Court adjourns at 5:05 p.m. until Nov. 3, 1975 at 10:00 a.m. MAC MAHON, J.* (Beecher, R., DeRosa, D. C.) M-11/3/75 *(Sitting by Designation).
11/3	JURY TRIAL CONTINUES: Court opens at 10:10 a.m. 18 jurors present. Deft. witness, previously sworn, resumes stand and testifies. 4 Deft.'s witnesses sworn and testified. Deft.'s Exs. FFF, TT, UU, VV, WW, marked for identification. Deft. Ex. WW, filed as full exhibit. Jury excused at 12:50 for lunch. Atty. Santos makes Motions to Admit the Suca Statement and For the Name of the Informant. Mr. Joost adopts the same motions. Both motions denied. Court recess from 1:00 p.m. to 2:30 p.m. Atty. Wade renews Motion to Admit Suca Statement. Deft. Ex. XX marked for Identification. Mr. Joost moves for a Mis-Trial and Severance. Atty. Zinni joins in same motions. Both motions denied. Jury re-enters Courtroom at 2:43 p.m. 2 Deft. witnesses sworn and testified. Deft. Exs. FF, EE,

DATE 1975	PROCEEDINGS
11/3 (cont.)	HH, II, BB, JJ, marked for identification. Deft. Exs. LL, AA, CC, DD and GGG, filed. Govt. Exs. 51, 52, 53, 54 and 55 marked for identification. Jury excused at 4:52 p.m. Govt. Ex. 63 filed. Court adjourned at 5:10 p.m. until Wednesday, Nov. 5, 1975 at 10:00 a.m. MACMAHON, J. Sitting by Designation. (Beecher, R., DeRosa, D.C.) M-11/4/75
11/3	Marshal's Returns showing service, filed. (5 Subpoenas to Testify McDonald, Waterson, P. Guillette, Mangianti, and Woodall)
11/3	Marshal's Returns showing service, filed. (3 Subpoenas to Produce Iannetta, Sullivan and Custodian of Records, Mt. Sinai Hosp., Hartford, Conn.)
11/5	JURY TRIAL CONTINUES: Court opens at 10:35 a.m. Transcript of Cross-examination of William Marrapese on Oct. 31, 1975 by Atty. Zinni, filed. Motion by Atty. Santos To Follow the 10 year Felony Rule - granted. 5 Defts.' witnesses, sworn and testified. Atty. Wade makes Motion to Grant Witness Immunity to Testify - denied. Atty. Wade makes Motion to Dismiss as to Joost and Guillette - denied. Atty. Santos makes Motion for Mistrial - denied. 18 jurors enter Courtroom at 11:00 a.m. Deft. witness, previously sworn, resumes stand and testi Govt. Ex. 58, filed. Govt. Ex. 57 marked for identification. Deft.'s Exs. HHH, III, JJJ, KKK, DD, BB, EE, FF, HH, II, JJ, and KK, filed. Deft. Guillette sworn and testified. Court recess from 1:00 p.m. to 2:15 p.m. Deft. Guillette, resumes stand and testifies. Jury excused for recess at 3:25 p.m. Court recess from 3:30 to 3:50 p.m. Deft. Ex. SS, filed. Jury returns to courtroom at 4:00 p.m. Deft. Guillette resumes stand and testifies. Jury excused at 5:00 p.m. Atty. Zinni makes a Motion to Dismiss - denied. Court adjourned at 5:20 p.m. until tomorrow Nov. 6, 1975 at 10:00 a.m. MACMAHON, J., Sitting by Designation. (Beecher, R., DeRosa, D. C.) M-11/6/75
11/5	CJA 21 appointing Gerald Gale, Court Reporter, to provide transcript of Trial Testimony of Witness McDonald, executed and filed. (Newman, J.) Copies to G. Gale and Administrative Office.
11/5	CJA 21 executed, approved by the Court, and filed. (Newman, J.) Copy mailed G. Gale and Administrative Office for payment.
11/6	Transcript of Testimony of William Marrapese on August 5, 1975 in Hartford before Newman, J., filed. (Merchant, R.)
11/6	Transcript of Testimony of William Marrapese on August 6, 1975 in Hartford, before Newman, J., filed. (Merchant, R.)
11/6	Transcript of Testimony of William L. Marrapese in Voir Dire examination by Mr. Santos, Mr. Coffey and Mr. Wade; Cross-examination by Mr. Santos, Mr. Wade and Deft. Joost, on August 7, 1975 in Hartford before Newman, J., filed. (Merchant, R.)
11/6	Transcript of Testimony of William L. Marrapese in Voir Dire by Mr. Santos, Mr. Joost and Mr. Bucci; Cross by Mr. Joost and Cross by Mr. Zinni, on August 8, 1975 in Hartford, before Newman, J., filed. (Merchant, R.)
11/6	Transcript of Testimony of William Marrapese on August 11, 1975 in Hartford before Newman, J., filed. (Merchant, R.)
11/6	Transcript of Testimony of Gerald M. Woodall on August 14, 1975 in Hartford, Conn. before Newman, J., filed. (Cohen, R.)
11/6	Transcript of Testimony of David Guillette in Direct Examination by Atty. Santos and Cross-Examination by Atty. Coffey on August 19, 1975, in Hartford before Newman, J., filed. (Merchant, R.)
11/6	Transcript of Testimony of David Guillette in Cross-Examination by Atty. Coffey, on August 20, 1975 in Hartford before Newman, J., filed (Merchant, R.)

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11/6	JURY TRIAL CONTINUES; Court opens at 10:15 a.m. 18 jurors present. Deft. Guillette, previously sworn, resumes stand and testifies. Deft. Joost, sworn and testifies. Govt. Ex. 61, filed. Court recess at 1:10 to 2:20 p.m. Deft. Joost resumes stand and testifies. Jury excused at 3:10 p.m. Court recess from 3:15 to 3:40. 1 Govt. witness, sworn and testifies. Jury excused at 3:55 p.m. Court adjourns at 5:00 p.m. until November 7, 1975 at 10:00 a.m. MACMAHON, J., Sitting by Designation. M-11/7/75 (Beecher, R., DeRosa, D. C.)
11/6	Brief of United States in Support of Submission to the Jury of Count One, alleging a Conspiracy with Death Resulting, Against Defendants Robert Joost and Nicholas Zinni, filed, in Chambers.
11/7	JURY TRIAL CONTINUES: Court opens at 10:20 a.m. Deft's. witness, previously sworn, resumes stand and testifies in absence of jury. Courtroom is cleared of spectators and this testimony is treated "in camera." Court Ex. 3, filed. Jury enters courtroom at 12:20 p.m. All 18 jurors present. Atty. Zinni reads transcription of Court Ex. 3 to jury. Jury excused for lunch. Court recess from 12:55 to 2:15 p.m. Govt. witness, resumes stand. All defendants rest at 2:17 p.m. Witness Petrella, previously sworn, resumes stand and testifies in rebuttal for Govt. Govt. rests at 2:21 p.m. Jury recess at 2:22 p.m. Atty. Santos makes Motion of Acquittal for Guillette, Denied. Atty. Wade makes Motion of Acquittal for Joost - Denied. Atty. Zinni adopts Motion of Atty. Wade - Denied. Jury returns to Courtroom at 2:35 p.m. Atty. Coffey begins summation argument before Jury at 2:36 p.m. and ends at 3:34p.m. Court excuses jury for recess at 3:35 p.m. Atty. Zinni makes Motion for Mistrial - Denied. Attys Wade and Santos move for Mistrial - Denied. Recess from 3:37 to 3:50 p.m. Jury returns to Courtroom. Atty. Santos Summation 3:52 to 4:55 p.m. Court adjourned at 5:00 p.m. until November 10, 1975 at 10:00 a.m. MACMAHON, J., Sitting by Designation. (Beecher, R., DeRosa, D.C.) M-11/11/75
11/10	JURY TRIAL CONTINUES: Court opens at 10:10 a.m. 18 Jurors present. Robert Joost Summation pro se 10:12 to 11:01 a.m. Recess from 11:02 to 11:17 a.m. Atty Zinni Summation 11:18 to 12:15 p.m. Gov't. Final Summation by Atty. Coffey 12:16 to 12:45 p.m. Jury excused for lunch at 12:47 p.m. Atty. Santos moves for Mistrial and Atty. Wade joins in Motion - Denied. Court recess from 12:55 to 2:10 p.m. Judge's Charge to Jury 2:15 to 3:45 p.m. 6 alternate jurors are excused with thanks of the Court. 12 jurors return to jury room and commence deliberation at 3:48 p.m. All full exhibits taken into jury room at 4:08 p.m. Oath of Marshal's Attending Jury given to A. DiRienzo, A. Miller, P. McDonough and R. Ennis. Court recess at 4:10 p.m. Jury sends question to Judge at 6:35 p.m. re: Charge. Jury re-enters Courtroom at 6:50 p.m. and is re-charged on 5 Elements of a Conspiracy. Court recess at 7:30 p.m. Jury excused for supper served at the expense of the Government from 7:30 to 9:15 p.m. Jury continues deliberation 9:15 to 10:00 p.m. Jury excused by Court until 9:30 a.m. November 11, 1975. Court adjourns at 10:01 p.m. Jury sequestered at the Holiday Inn, Bridgeport for the night, at the expense of the Government. MACMAHON, J., Sitting by Designation. (Beecher, R., DeRosa, D. C.) M-11/11/75
11/10	CJA Form 21 executed, approved by the Court, and filed. (MACMAHON, J. Sitting by Designation) (Transcript of testimony of persons listed in Schedule A, needed for these defts. for re-trial of this case.) Copies mailed Administrative Office for payment and G. Gale, Reporter.
11/10	Judge Newman's Request to Charge submitted by defense counsel and granted in substance except as noted by Judge MacMahon, filed.

D. C. 100 Criminal

DATE 1975	PROCEEDINGS
11/12*	Transcript of Testimony of Gerald M. Woodall on August 15, 1975, in Hartford before Newman, J., filed. (Cohen, R.)
11/11	JURY TRIAL CONTINUES: Court opens at 9:30 a.m., 12 jurors present, and continue deliberations. Court Ex. "E", filed, note from jury re: interpretation of law on Ct. 1. At 11:10 a.m. note from Jury requesting part of Marrapese testimony be read. Jury enters courtroom at 11:25 a.m. and reporter read requested material taken on Oct. 24, 1975. Jury retur to deliberation at 11:40 a.m. Court Ex. "F", filed, note from jury requesting Marrapese's testimony be read. Jury brought into courtroom at 12:30 p.m. Jury announces its verdict at 12:33 p.m. and hands "Verdi Form" to Court by its foreman, Michael J. Dina - VERDICT: DEFT. GUILLETTE: Ct. 1, Question 1 - guilty. Count 2 - guilty. Count 3 not guilty. DEFT. JOOST: Count 1, Question 1 - guilty. DEFT. ZINNI: Count 1, Question 1 - not guilty. Count 1, Question 2 - not guilty. Jury not polled. Jury excused with thanks of the Court at 12:40 p.m. Verdict verified and ordered recorded. Court recess from 12:45 to 2:40 p.m. Atty. Wade makes the following motions, to which Atty. Santos join 1. Motion Under Rule 29c to Set Aside the Verdict and Enter Judgment of Acquittal; 2. Motion under Rule 33 for a New Trial; and 3. Motion Und Rule 34 for Arrest of Judgment - all three Motions - denied. Court Ex. "G", filed, all jury questionaires of panel in this case placed under seal. Bail of $100,000.00 set by Court pending sentence. Pre-sentence Report to be filed by Probation Department. Sentence to be on Jan. 12, 1976 in Hartford. Court adjourned at 3:46 p.m. (MacMahon, J., Sitting by designation) (Beecher, R., DeRosa, D. C.) M-11-12-75
11/11	DEFT. ZINNI: Withdrawal of Appeal from Ruling on Motions for Judgment of Acquittal (Notice of Appeal filed 10/22/75), filed. Certified copy mailed to Clerk, U. S. Court of Appeals.
11/14	Marshal's Returns showing service, filed. (Two Writs of Habeas Corpus Ad Testificandum - John A. Housand and Edward Z. Sitko)
11/17	DEFT. ZINNI - Attested copy of Mandate of Court of Appeals, entered. (Moore, Feinberg, Van Graafeiland, Js.) M-11/18/75 Petition for a writ of mandamus - denied. Motion for a stay - denied.
*	Transcript of Testimony of Gerald McDowell on February 10, 1975 in Hartford before Clarie, J., filed. (Sperber, R.)
12/1	Transcript of Testimony of Gerald McDowell on February 10, 1975 Afternoon Session in Hartford before Clarie, J., filed. (Collard, R.)
12/1	Letters Judge MacMahon indicated could be filed as Exhibits in connection with offer of proof made on November 5, 1975 in open court by Attys. Santos and Wade re: Housand's recantation, filed.
11/24*	Motion for Return of Exhibit (29 M-16 Machine Guns introduced at trial) Stipulated by Attys. Coffey, Wade and Santos, filed. SO ORDERED, MacMahon, J. M-12/5/75 H Copies to Attys. Coffey, Wade and Santos.
12/5	MEMORANDUM Certifying Atty. Santos' Claim for representation under CJA in amount of $2,160.00, filed and entered. MACMAHON, J. M-12/8/75 Copies to respective counsel of this and the following Memoranda.
12/8	MEMORANDUM certifying Atty. Wade's Claim for representation under CJA in amount of $2,509.20, filed and entered. MACMAHON, J. M-12/8/75
12/8	MEMORANDUM approving claim of Dr. Frank Sullivan for compensation under CJA in amount of $300.00, filed and entered. MACMAHON, J. M-12/8/7
12/9	GUILLETTE: C.J.A. Form 20 approving payment of $8100.00 to Hubert J. Santos as counsel for defendant during trial before Newman, J. at Hartfo filed. (Newman, J.) APPROVED, I.R.K.) Copy mailed Administrative Office for payment.

DATE	PROCEEDINGS
19[illegible]	
1[illegible]	JOOST: C.J.A. Form 20 approving payment of $8697.73 to James A. Wade, Esq. as counsel for defendant during trial before Newman, J. at Hartford, filed. (Newman, J.) APPROVED. I.R.K.) Copy mailed Administrative Office for payment.
12/10	Marshal's Return showing service, filed. (Writ of Habeas Corpus Ad Testificandum - Frank Klein)
12/10	Marshal's Return showing service, filed. (Writ of Habeas Corpus Ad Testificandum - John Klauzenberg)
12/15	Court Reporter's Notes of proceedings (Trial) held in Hartford on July 28, 29, 30, 31, August 1, 4, 5, 6, 7, 8, 11, 12, 13,14, 15, 18, 19, 20, 21, 22, 25, 26, 27, 28, 29, September 2 and 3, 1975, filed.*(Merchant and Cohen, R.)*in New Haven.
11/18*	Marshal's Return showing service, filed. (Writ of Habeas Corpus Ad Testificandum - William Moore)
12/17	MEMORANDUM certifying Atty. Ferland's claim for representation of Deft. Zinni under CJA in amount of $2,024.10, filed and entered. MACMAHON, J. M-12/18/75 Copies to counsel.
12/18	DEFT. NICHOLAS ZINNI: Judgment of Acquittal of charges contained in Indictment, filed and entered. MACMAHON and NEWMAN, J's. M-12/18/75 Copies to Attys. Coffey, Zinni and Ferland.
12/29	Memorandum vacated and returned to Judge MacMahon along with Atty. Ferland's CJA 20, per instructions of Judge MacMahon.
1976	
[illegible]/8	DISPOSITION: ROBERT JOOST- ct. 1 - committed 25 years. Deft. advised of rights of appeal - Atty. Wade requests order so that he may help him on appeal. Court states that Mr. Joost may remain in Connecticut for a reasonable time to prepare appeal - for so long as it takes to file brief within minimum time allowed.(MacMahon,J.)Sitting by designation)
1/8	DISPOSITION: DAVID GUILLETTE - cts. 1 & 2 - committed 25 years on count #1 and 5 years on count #2 to run concurrently. Deft. advised of rights of appeal.(MacMahon,J.- Sitting by Designation)
1/9	GUILLETTE AND JOOST - NOTICE OF APPEAL, filed. Copies disbursed to Attys. Santos, Wade and Coffey.
1/12	Certified copy of Notice of Appeal and Docket entries mailed to U.S.C.A.

UNITED STATES OF AMERICA)
)
v.) CRIMINAL NO.
)
DAVID GUILLETTE, ROBERT JOOST,)
WILLIAM MARRAPESE, NICHOLAS ZINNI)

#52 4

FILED
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U.S. DISTRICT COURT
HARTFORD, CONN.
CLERK

COUNT ONE

From on or about May , 1972 until on or about September 29, 1972 in the District of Connecticut, and elsewhere, DAVID GUILLETTE, ROBERT JOOST, WILLIAM MARRAPESE, and NICHOLAS ZINNI, the defendants herein and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to injure, oppress, threaten and intimidate one Daniel Lapolla, a citizen of the United States of America, in the free exercise and enjoyment of a right and privilege secured to him by the Constitution and laws of the United States and because of him having exercised said right and privilege, to wit, the right and privilege to give information to the proper authorities concerning violations of the gun control laws of the United States, and the right and privilege to be a witness in a judicial proceeding in the United States District Court for the District of Connecticut, to wit, the case of United States v. William Marrapese, Nicholas Zinni, Robert Joost and David Guillette, Criminal No. H-264 ; and it is further alleged that this combination and conspiracy resulted in the death of Daniel Lapolla.

All in violation of Section 241, Title 18, United States Code.

COUNT TWO

On or about September 29, 1972, in the District of Connecticut, David Guillette, Robert Joost, Nicholas Zinni and William Marrapese unlawfully, wilfully and knowingly endeavored, by force and violence, to influence, intimidate and impede Daniel Lapolla, a witness in a Court of the United States, a witness in the matter of the United States v. William Marrapese, Nicholas Zinni, David Guillette and Robert Joost, Criminal No. H-264, which was before the United States District Court for the District of Connecticut.

All in violation of Title 18, United States Code, Section 1503.

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COUNT THREE

On or about September 29, 1972, in Oneco, Connecticut in the District of Connecticut, David Guillette, Robert Joost, William Marrapese and Nicholas Zinni did wilfully, unlawfully and knowingly use an explosive, that is, a dynamite bomb, to commit a felony prosecutable in a court of the United States, said felony being the influencing and injuring by force a witness in a Court of the United States, i.e. one Daniel Lapolla and the influencing and injuring of said Daniel Lapolla for having so testified in a proceeding of the United States, thus impeding, obstructing and influencing the due administration of justice, in violation of Section 1503, Title 18, United States Code.

All in violation of Title 18, United States Code, Section 844 (h)(1).

A TRUE BILL

Foreman

STEWART H. JONES

UNITED STATES ATTORNEY

Paul E. Coffey

PAUL E. COFFEY
SPECIAL ATTTORNEY

United States District Court
District of Connecticut
FILED AT HARTFORD

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

10-24, 19

Sylvester A. Markowski, Clerk

By

Deputy Clerk

UNITED STATES OF AMERICA)
)
v.)
) CRIMINAL NO. H-524
DAVID GUILLETTE,)
ROBERT JOOST)

BILL OF PARTICULARS

COUNT ONE

The outer limits of the dates within which the alleged conspiracy commenced and ended are May 4, 1972 through September 29, 1972.

COUNT THREE

The outer limits of the dates within which the explosion was plotted are May 4, 1972 through September 29, 1972.

STEWART H. JONES
STEWART H. JONES

By:

PAUL E. COFFEY

defendant, Guillette, rests.

MR. JOOST: The defendant, Joost, rests, your Honor.

MR. ZINNI: If your Honor please, we do not rest. Trooper Veillette is here and the transcription as the court knows is being worked on. I don't know as they are complete yet. I am just wondering if we might have a recess at this time so I could check.

THE COURT: We will take a short recess.

MR. ZINNI: Thank you. I appreciate that, your Honor.

THE COURT: Would counsel stay for a minute?

(The jury left the courtroom at 3:10 p.m.)

THE COURT: As I remember it, all of you asked me to charge as did Judge Newman. Do I understand that to be your request to charge, Mr. Wade?

MR. WADE: Yes, sir.

THE COURT: Mr. Zinni?

MR. ZINNI: We have a couple of supplemental requests.

THE COURT: I know of your supplemental ones.

MR. ZINNI: Otherwise, yes.

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THE COURT: Just in the substance of Judge Newman's charge?

MR. ZINNI: Yes, your Honor.

MR. SANTOS: Yes, your Honor.

THE COURT: I would address this to you specifically then, Mr. Santos. He charges Pinkerton and joint venture on counts 2 and 3. Do you want that?

MR. SANTOS: Well, I don't think the evidence would support that charge on Guillette.

THE COURT: Well, apart from whether the evidence supports it, do you want that charge?

MR. SANTOS: I don't believe I would want it, no, your Honor.

THE COURT: Do you want it?

MR. COFFEY: To be honest with you, I don't think there is a premise for it, your Honor, legally because --

THE COURT: All right. The problem is solved. I've gone through Judge Newman's count 1 and I have indicated some notes on the top of it, and I would ask the clerk to make the appropriate number of photocopies so that each of you can have one and I hope my handwriting is such that you can read it better than I can.

If you have any doubt of what I did, don't shy away from asking me, but there's much of this I would not give. There's much of it I will give, and to the extent that I do give it, I will probably do it in my own words and own way and not Judge Newman's way. But on the whole, I would think my charge would be probably about a third as long as this one. It's not my practice to get into the evidence at all, and I don't intend to.

MR. COFFEY: May we inquire -- I know all counsel want to know this, your Honor. Is the court going to charge that the jury must find a May 8th eeting?

THE COURT: No. I am definitely not going to charge that. If there is any doubt about that, I think I have written five no's along the margin of that page. Now, on counts 2 and 3, if you don't make too many objections, maybe we can finish this afternoon. Do you want an alibi charge?

MR. SANTOS: Yes.

THE COURT: Do you? Who doesn't?

MR. WADE: We do, your Honor.

THE COURT: Well, we haven't heard your

client yet. I don't put the question to you until later. All right.

MR. SANTOS: You don't have to give the charge of the fingerprint expert.

THE COURT: Thank you.

MR. SANTOS: We get a little and we lose a little.

THE COURT: Well, if I hit any more like the one I just had here, in reading I thought that's an odd thing for Santos to be requesting in this case.

MR. ZINNI: Could I ask how the court does intend to handle the May 8th meeting?

THE COURT: I think this will give you a good idea, Mr. Zinni.

MR. ZINNI: That is the first time in twenty years a judge has given me a copy of the instructions.

THE COURT: It's not a copy of the instructions. It's my rulings on what constitutes your request to charge.

MR. ZINNI: All right. Even that. Thank you.

(Whereupon, court recessed at 3:15 p.m. and reconvened at 3:40 p.m.)

maybe the Marshal or somebody will go down and get it for you.

(Whereupon, the jury left the courtroom at 3:55 p.m.)

THE COURT: Would counsel come into chambers and let's see where we are going here schedule-wise.

(The following transpired in chambers.)

THE COURT: All right. I just am wondering what our schedule is to be from here on in and I want to get your thoughts about it.

MR. SANTOS: I thought we could summarize tomorrow, your Honor, and then charge on Monday. That's my feelings.

THE COURT: That suits me.

MR. COFFEY: Fine.

MR. ZINNI: Fine.

THE COURT: But you are entitled to know what I am going to charge and what I am not going to charge before then and I have -- do you have those?

THE CLERK: Yes, sir. Original and four.

THE COURT: This is on the conspiracy. Give me the original back. I think that will give you a fairly good idea. If you have any

questions about it before we start summations, let me know.

Let the record note that I have handed each defense counsel and Mr. Joost and Mr. Wade and Mr. Coffey a copy of Judge Newman's charge which defense counsel asked me to consider as their request to charge, and I have written my notes on it whether I would give it in substance, whether I would not give it, whether I would alter the form and so on. I have done that only with respect to the first count, and if you have any questions, if there's something that isn't clear to you after you have had an opportunity to look at it this evening, let me know tomorrow before we sum up. All right.

MR. SANTOS: Yes, your Honor.

THE COURT: Now, we will roll along. I remember out there saying to you: Do you want an alibi? As I see it, there really is no such thing as alibi in the sense of the defense in this case. It's simply a matter of conflicting evidence as to what people were present at certain times or whether they were not. It isn't the kind of case where it lends itself to the defense of alibi in the strict sense at all.

MR. SANTOS: Well, of course, our position would be that -- I know your Honor realizes that the alibi is the May 8th meeting, and our position is that without that meeting, without testimony on that meeting, there is not a prima facie case that would go to the jury.

THE COURT: I'm sure that is your position. Even if there were no May 8th meeting, I disagree with you. I couldn't disagree more on that [illegible], and that taking that position, there is no alibi. In fact, I don't even think given that position there is an alibi. There's an argument. There's evidence, of course, which you can argue to the jury whether you were there or not there, and the Government can present its side of the case, but it's not an alibi. So I am not going to charge alibi.

Now, that gets me up to the second count, and I will give in substance the same as all the other judges have given here on count 2 and count 3, that is, to the elements of the crime. I don't know what else he has got in here. Let me see what else.

I will not charge on Pinkerton nor will I charge joint venture, nor aiding and abetting,

none of which do I think are applicable in the light of the evidence on this trial. Anyone object or have any requests to make those charges? I wouldn't think so.

MR. SANTOS: No. We concur with your Honor's feeling.

THE COURT: That gets rid of a lot of this. When I say I will charge, I will not, as I have told you before, get into the evidence at all, and I don't intend to except as it may be necessary to focus attention on your contentions as they relate to the charge. But on the whole, I will not get into the evidence. That is your job and not mine.

Let me ask you, Mr. Coffey. As a matter of law, does the Government have to prove here that Daniel LaPolla's death was intentional?

MR. COFFEY: No.

THE COURT: If it was a result of the conspiracy, that is enough, isn't it?

MR. COFFEY: Yes.

THE COURT: Does anybody disagree with that?

MR. WADE: Well, our position would be though, your Honor, that there has to be intent to get into the conspiracy, and that you have to manifest

the intent to do certain things to him, and that's where the intent factor comes into play. And this, of course, I will be making in my Rule 29 motion.

THE COURT: I see what your point is. What about that, Mr. Coffey? In order to convict him on conspiracy resulting in death, you have to show that conspiratorial agreement to which the defendant assented embraced the killing of LaPolla, wouldn't you?

MR. COFFEY: No.

MR. WADE: That is our contention.

MR. COFFEY: I understand the argument. I strongly disagree with that, your Honor, and I base that -- first of all, in fact, some statutes have limited intent is necessary; and secondly, because this particular statute is drafted in a rather unusual bifurcated manner. It says "whoever wilfully joins a conspiracy designed to deprive someone of his civil rights is guilty of an offense", and the offense is complete.

And then it goes on to say "If death results there is an increased penalty." It does not go on to say that "whoever wilfully joins a conspiracy which is intended to cause death",

and I think it really is clear from the statute that the intent is no more than the intent that is normally needed in a conspiracy which is to further an illegal act for a purpose, and the purpose is only to deprive Daniel LaPolla of his civil rights, and I suggest to the court if we all agreed right now to prevent Ray Veillette from taking the stand tomorrow, and then one of the individuals were to go out tonight and kill Ray Veillette as opposed to bribing him or sending him out, we would all be guilty and our intent only to keep from testifying is enough to make us liable for any act which is reasonably designed to further the purpose of that conspiracy.

I strongly suggest to the court that if Congress wanted "intent to cause death", they would not have written the statute the way they did.

THE COURT: I still think it has to be something that is within the scope of the conspiratorial agreement. So I will charge -- in fact, I have that. Where is it?

MR. COFFEY: Let me suggest this to the court.

THE COURT: I will tell you what I think I am going to charge on it. Hold just a minute.

MR. WADE: I presume, your Honor, that once everybody has rested, you will excuse the jury for purposes of making our Rule 29 motion; right?

THE COURT: What?

MR. WADE: We will excuse the jury for purposes of making our Rule 29 motion before summation begins.

THE COURT: Yes. But again, just the motions for the record. I don't want any elaborate arguments.

MR. WADE: You heard me the other night.

THE COURT: That's all I want. You can make those if the case goes that far in the Court of Appeals. They have got time to listen.

MR. ZINNI: Could you give me five minutes to argue those motions? I would like to call the court's attention to some of the testimony.

THE COURT: I have heard all the testimony. If you want to waste your breath, you can, Mr. Zinni.

MR. SANTOS: I don't want to interrupt, your Honor, your train of thought on this other

matter, and I don't know if it is in Judge Newman's charge, but in all --

THE COURT: There was everything in this charge.

MR. SANTOS: But it seems to me before the jury can find that the conspiracy resulted in death, it must specifically find that one of the co-conspirators or one --

THE COURT: Caused his death.

MR. SANTOS: -- actually did it.

THE COURT: Caused his death.

MR. SANTOS: But I don't think that has ever been spelled out.

THE COURT: Well, I think it is. They have got to cause death.

MR. SANTOS: And they have to find that one of the --

THE COURT: The reason I get into the problem is all this business in here about accident, and I just don't think it has any part in it. That is not that you can't argue that this was accident, that nobody killed him, but the Government doesn't have the negative accident, I don't think.

Here's what I intended to charge on. No

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point in keeping it secret. I am not charging seven elements. There are only five as I see it. You will recall that the fifth element which the Government is required to prove is that the conspiracy resulted in the death of LaPolla. There is no dispute in the evidence that LaPolla met his death on September 29, 1972. The question for you, therefore, is whether LaPolla's death resulted from the conspiracy charged in this indictment. Death results from the conspiracy if it is caused by an act of one or more of the conspirators in furtherance of the purposes of the conspiracy. You must consider each defendant separately. That's it.

MR. COFFEY: That's fine. I have no objection to that.

MR. WADE: Well, our position though would be that you have to tell the jury that the death -- in order to attribute guilt for the death to one or more of the co-conspirators, you must show that the conspiracy entered into by a particular conspirator encompassed killing, and if they only -- even if one of them only entered into a conspiracy to bribe or beat and

one of them beyond that, then they can't consider it as death resulting from the conspiracy.

THE COURT: Well, I think I might summarize.

MR. WADE: You may cover it in your definition of a conspiracy.

THE COURT: I think I've got it here where I talk about responsibility for the acts of co-conspirators. If you find that a defendant did join the conspiracy with knowledge of its illegal purpose, then he is bound by what other members say and do afterward within the scope and purposes of the conspiracy as the defendant understands it even though he is not present provided he has not withdrawn from the conspiracy. Each conspirator is the agent or partner of every other conspirator.

MR. COFFEY: Your Honor, that also I would have no objection to, but I know Mr. Wade wants you to go further. Let me respectfully give the court a hypothetical.

THE COURT: I know he does, and I don't agree with him. But I just want to make sure I understand you. Say it again.

MR. WADE: My position would be that the court should instruct the jury that if each

member of the alleged conspiracy enters that conspiracy with the belief that it will rise to a certain level of criminality and no other, and one or more of those conspirators goes beyond that level of criminality --

THE COURT: Then he is outside the scope?

MR. WADE: Then the conspirator who understood the lower level of criminality cannot be held to be responsible for that activity beyond which his understanding rose to.

MR. COFFEY: May I be heard?

THE COURT: Yes.

MR. COFFEY: The scope is to prevent him from testifying. What Mr. Wade wants you to do is require these defendants to sit down --

THE COURT: And agree on the means.

MR. COFFEY: Not only on the means, but the scope of employment of each co-conspirator and how far they can go. Now, that is a factual question it seems to me, not a legal one.

THE COURT: No. I don't agree with that analysis of it, Mr. Coffey.

MR. COFFEY: Well, your Honor, what he is asking is that the court instruct the jury that each defendant or each member of the conspiracy

must know what acts, specific acts other members of the conspiracy are going to do and how far those acts will go to prevent Daniel LaPolla from testifying. We don't agree that those limitations should be placed on the conspiracy, and I go back to the language of the statute. Suppose we all agree to prevert someone from voting by blowing up a voting booth which is what this statute was originally designed to do, and that was to be the civil right deprived? What Mr. Wade -- and we understood that it was going to done at night because no one would be around. As a matter of fact, there was a night watchman around and he was killed. And what Mr. Wade wants you to instruct the jury is under that fact pattern that the agreement has to be to kill that particular night watchman in furtherance of the conspiracy to deprive someone of exercising civil rights. Perhaps a night watchman incident is a little bit off the track.

Let's suppose it's a voter who just --

THE COURT: Let's take the case that we have got. I don't have to go through a lot of suppose cases.

MR. COFFEY: Because the statute was

drafted that if there is a specific purpose carried out by the conspiracy, that is enough to bri[illegible] someone within the confines of the conspiracy. Now, if death results, and it resulted from trying to carry out the purpose of the conspiracy, anyone in that conspiracy is guilty. It does not say that the conspirators have to agree to death resulting.

THE COURT: Where is your indictment? Doesn't your indictment get into that?

MR. COFFEY: I don't think so, your Honor.

THE COURT: I think there's substance to what you say, that the conspiratorial agreement must embrac[illegible] the infliction of serious bodily harm of death. I think so.

MR. WADE: It seems to me it makes sense, your Honor, that it's so.

THE COURT: Do you want to keep arguing, Mr. Wade?

MR. WADE: No, sir. That wasn't arguing. That was a concurrence.

TH[illegible] COURT: I am going to charge that in my own way. I will cover that point and that's one within the scope of the agreement. It has to be. All right.

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I will not get into this business about accidents, however. I don't see that that is part of it at all.

MR. WADE: We can argue it though, of course?

THE COURT: Certainly. You are free to argue it, but nobody in the conspiracy was -- not what resulted in his death, an accident resulted in his death.

MR. WADE: You are going to have to define what a homicide for them though is.

MR. SANTOS: That was going to be my point. You have to prove it was a homicide.

THE COURT: I don't think you do. I don't think you do at all.

MR. SANTOS: It would be our position that they would have to prove it was a homicide beyond a reasonable doubt.

MR. WADE: Right.

MR. SANTOS: In other words --

THE COURT: I don't agree.

MR. SANTOS: Our argument to the jury would be, your Honor, if they have a reasonable doubt as to whether this was an accident or a homicide, they must acquit.

THE COURT: No. I would not so charge.

MR. SANTOS: At least as resulted in death.

THE COURT: I would not so charge them. If the accident were caused as a result of this conspiracy, you would be liable, whether they're liable as conspirators here for in death resulting under this statute --

MR. SANTOS: Let me say this, your Honor.

THE COURT: I think if you did -- for example, let me give you a case. If you conspired to prevent his testifying and some member of this conspiracy finds LaPolla and he starts chasing him with an automobile and LaPolla falls down and he runs over him, purely accidentally, and his death results, you would be liable. I haven't any doubt in my mind about it. There need be no homicide.

MR. SANTOS: Let's take this hypothetical, your Honor. Let's say LaPolla because of the fact that these fellows are flying over his house in a plane and are coming over to the funeral home of his brother, gets so afraid he says "I'm going to set up a bomb as a trap." and boom, it goes off, which basically, is our argument. Now, would they be responsible for

his death under that circumstance?

THE COURT: I think they might. If you can prove that chain of circumstances.

MR. COFFEY: Let me respectfully, your Honor: Suppose the agreement was to scare Daniel LaPolla or cause him harm and the fellow driving the car chasing LaPolla lost control of the car and ran him over.

THE COURT: That's what I just said. You're just giving me back the example I just gave.

MR. COFFEY: But I understood the court to say there is no question in your mind that they would be liable.

THE COURT: That is what I did say.

MR. COFFEY: But I thought you just got through saying on another point that the agreement of the co-conspirators has to be to cause his death, serious bodily harm.

THE COURT: It does.

MR. COFFEY: I would suggest to the court that if the agreement was to run the car past LaPolla to scare the wits out of him so he wouldn't testify and the car hit him instead, that they're guilty of death resulting within the meaning of the statute and that the

co-conspirators don't have to agree to have the car hit him, and that's why the statute is drafted the way it is.

THE COURT: All right. I will study it. I think, Mr. Coffey, it needs a little further study. I will advise you on this before you sum up tomorrow.

All right. Let's roll along.

MR. WADE: Your Honor, before you go, I presume Mr. Joost is going to be handling his own summation; am I correct on that?

THE COURT: Yes. All this right to interview witnesses and all this, I'm just not going to clutter a charge with it.

MR. SANTOS: Of course, we press that, your Honor.

THE COURT: No.

MR. WADE: Can we argue it?

THE COURT: Well, I don't see -- what are you arguing about?

MR. SANTOS: Well, the point is: Many of the overt acts they claim occurred is Marrapese roaming about making contacts with witnesses and hiring an investigator to see if he could contact LaPolla. This is a constitutionally

guaranteed right, and it's just as consistent with innocence as with guilt, except now they have got the May 8th meeting so they make it their overt act.

MR. COFFEY: Your Honor, there is no testimony that any of the defendants understood that they were pursuing these matters in furtherance of what they understood to be a constitutional right. The only person who testified as to these particular acts in furtherance of bearing the case was Marrapese, and his testimony is that --

MR. WADE: Joost did.

MR. COFFEY: And his testimony was they were all overt acts, and what concerns me only is that if the court doesn't charge something in that respect, we may be denying the defense an opportunity at least to argue that they had this right. I would hate to have that on the record, but I think the court ought --

THE COURT: I will tell them anybody can interview any witness, but I am not going to go three pages about the right to interview a witness. Nobody owns a witness. Anybody has got a right to interview any witness about

anything. Make a note of that, Miss Par.

Alibi, I will. Let's see what he has got. No. I will not give that alibi charge or any other. You are free to argue.

I will give the substance of what Judge Newman charged on other crimes.

I will not give his credibility charge. I will give my own. If you have got something you want to object to afterwards, I will hear you.

I will charge on accomplice testimony, but not as Judge Newman did. I will tell the jury that they have to scrutinize his testimony with special care and act upon it with caution, among other things.

MR. SANTOS: Your Honor, our position would be not to characterize Marrapese as an accomplice, but as an informant because, you know, we argue that -- my concern is that, of course, our claim is he is not an accomplice with us. He is an informant, and I think the accomplice and informant charge, basically, is the same as far as credibility is concerned.

MR. COFFEY: But he is neither an informant, your Honor. He is a witness. I suggest the

court just say that anyone who testifies with respect to his knowledge that the crimes charged therein should be weighed --

THE COURT: I will give my charge and I will call him an accomplice if you believe what he says. I have done it a hundred other times. The Court of Appeals has always affirmed it, and we are going to stay with it.

Do you want to charge on the defendants not taking the stand, Mr. Zinni?

MR. ZINNI: Yes, please, your Honor.

THE COURT: You do. All right.

MR. SANTOS: Your Honor, did you come across the testimony of an admitted perjurer? Did we include that? In other words, there is a separate charge is my recollection on testimony of an admitted perjurer. Marrapese admitted to be a perjurer.

THE COURT: I haven't come across that.

MR. SANTOS: We would request it.

MR. COFFEY: We would oppose it, your Honor.

THE COURT: I won't give it.

MR. WADE: That's in there.

THE COURT: I will not give the defendant-witness charge that Judge Newman gave. I would

simply say that he had a right to testify in his own behalf and you judge his credibility the same way you judge the credibility of every other witness. If he hadn't taken the stand, you couldn't draw any inference against him in any way, and having chosen to do so, then the same rules apply to him that apply to everybody else, giving consideration, of course, to his natural interest in the outcome of this trial. period.

MR. WADE: We would object to that last part.

MR. SANTOS: We would object to that also, your Honor, as derogating the presumptions. I guess you have heard these before.

MR. WADE: We claim that last part has a chilling effect.

THE COURT: A chilling effect. That's a good word now. You get the right panel on the Court of Appeals with a couple ice cubes you can do a lot.

MR. WADE: We are not suggesting that we are going to invite them out to have a little chill with us, your Honor.

THE COURT: Again, I will not give Judge

Newman's charge on failure to take the stand. Just simply charge he has no burden of proof to sustain, they can draw no inference against him from his failure to take the stand.

I guess we have to tell them about the expert medical examiner. Any other here?

MR. WADE: Dr. Sullivan. He rendered some opinions and Al Gleason rendered an opinion.

MR. SANTOS: Dr. Byall, the chemist.

THE COURT: Who were they? Can you help my memory on it?

MR. SANTOS: Gleason --

THE COURT: Gleason was the psychiatrist.

MR. SANTOS: Gleason was the explosives expert. Sullivan is the psychiatrist. Byall is the chemist.

THE COURT: Yes. Who else?

MR. SANTOS: Dr. Gross is the medical examiner.

THE COURT: Gross. Any others?

MR. WADE: That's it.

MR. COFFEY: I think that's about it.

THE COURT: I will give the charge, the substance of which will be they are here to help you, you are not bound by what their opinions

are and, in effect, you can take it or leave it. That's about what he does in more words. In other words, I will give the substance of it.

Do you want a charge, I take it, that you don't give any more credence to a Government agent than you do to any other witness?

MR. SANTOS: Yes, your Honor.

THE COURT: I take it you probably want one that the Government is not entitled to any special consideration as a litigant? I will give that. You don't have the transcript of the informant in this case.

MR. WADE: It's worth a second shot at that, your Honor.

THE COURT: I will not give the caution at the end of it. You do elect a foreman or forelady here.

MR. COFFEY: Yes.

MR. SANTOS: Yes.

THE COURT: All right. Put that in, elect foreman or forelady. Do they allow summations?

MR. WADE: No. Only opening statements, your Honor, aren't.

MR. COFFEY: I've seen Judge Murphy appoint a foreman.

THE COURT: No. In New York it's the first guy in the box, the number one juror is the foreman automatically.

MR. WADE: Does the court propose to give a jury form to them?

THE COURT: Yes, I do, and in that connection I'm certainly not going to give the one that has been given before which I don't think covers all the alternatives.

MR. SANTOS: Yes. That's right. We have always asked, your Honor, that none of the above -- include that, none of the above. Could you slip that in?

THE COURT: No. No. That's not going to go in. Mine is simply going to be -- the first one, for example, on your form here, does not give the jury -- as I see it, there are not three possible verdicts on count 1, but four. They can find him either guilty or not guilty on conspiracy not resulting in death and guilty or not guilty on conspiracy resulting in death, and this only permits three verdicts. It's not right.

MR. WADE: Well, I think the thinking was that --

THE COURT: The thinking is wrong.

MR. COFFEY: I think you're right.

THE COURT: You have to analyze it as I did today on the collateral estoppel problem. Thinking about it, this did not give the jury the option, as I see it, of finding him not guilty on the conspiracy to intimidate and not guilty on the conspiracy with death resulting.

MR. SANTOS: Maybe they will find him not guilty of conspiracy to intimidate but guilty of death resulting.

THE COURT: So with that modification, I will go over this form and will give them a form. It will be something like this. It will have just a blank and I'm not going to -- I'm not even going to have guilty of conspiring to intimidate. Just have conspiring to intimidate, and I will tell the jury to write your answer, guilty or not guilty opposite it. On conspiring to intimidate with death resulting, blank, write your answer, and I will have one as to each defendant.

MR. COFFEY: Your Honor, may I suggest that it might be necessary to avoid what -- I know I just got through telling the court inconsistency

is the jury's prerogative, but I don't see how they could find a defendant not guilty of a conspiracy to intimidate but guilty of a conspiracy with death resulting. It probably could never happen, but the court ought, I think, to inform the jury.

THE COURT: Let me follow you, Mr. Coffey. You don't see how a jury could find what?

MR. COFFEY: A defendant guilty of death resulting but not guilty of simple conspiracy. But if they're not told that they have to be consistent if they find guilt with death resulting, we risk giving them the fourth alternative or rather odd situation --

THE COURT: I see what you mean. How does this get in here with this lesser included crime baloney?

MR. SANTOS: Yes.

MR. WADE: Yes.

THE COURT: Do you really want it?

MR. SANTOS: Oh, yes, your Honor.

MR. WADE: Oh, boy, do we ever.

THE COURT: No. I'm serious.

MR. WADE: We are too, your Honor. We think it's important that this jury be able to

exercise its option to find him guilty of simple conspiracy, no death resulting.

THE COURT: I agree with you.

MR. SANTOS: I understand your Honor's point.

THE COURT: I agree with you. You gave them that option. Sometimes they rather might not want to scale a high hurdle and they might scale a lower one, but if you want it, you will get it. But it does raise just that problem, Mr. Coffey. I will have to work that out here.

MR. SANTOS: Of course, depending on what your Honor is going to do on it with respect to Joost and Zinni.

THE COURT: What do you mean?

MR. SANTOS: Well, yesterday there was some argument as to the death resulting aspect as to them.

THE COURT: Yes.

MR. SANTOS: If you are going to let it all go on everybody --

THE COURT: I am going to let it all go on everybody. That's my present thinking. I haven't yet heard Mr. Zinni's case. Based on the Government's evidence, I think there is

sufficient evidence for it to go to the jury as against everybody on count 1, certainly. As to Guillette on all three counts.

MR. WADE: Would the court consider taking it under 29(b) and reserving on that point?

THE COURT: No.

MR. WADE: Obviously, the significance, your Honor, is coming back at you with a 29(c) if you have --

THE COURT: Yes, but the next court, the Court of Appeals as far as I am concerned if they convict here.

MR. ZINNI: Your Honor, may I bring up a couple of points?

THE COURT: I'm not quite through yet, Mr. Zinni. I don't mean to cut you off. I just want to cover this and something more. That form has to be revamped.

I think that is the substance of it. Now, what specific requests do you have. You have some somewhere here, Mr. Zinni. They're buried in this pile of papers. Perhaps you have copies of them in front of you so I can rule on them.

MR. ZINNI: I think they're probably out on the table. Maybe I can basically cover them,

your Honor, here.

First of all, I would like to inquire whether the court intends to charge on the issue of multiple conspiracies.

THE COURT: No. I do not. I don't think the evidence admits it.

MR. ZINNI: You propose to tell the jury this is just one conspiracy?

THE COURT: I intend to charge on only one conspiracy. I will charge on withdrawal. I will charge on termination in much the way that Judge Newman did.

MR. ZINNI: Because I would ask that the court do so, but I understand the court's position.

MR. SANTOS: We would join in that, your Honor. I know we don't have to, but we are anyway.

THE COURT: What do you say, Mr. Coffey, about multiple conspiracies?

MR. COFFEY: No. There is only one conspiracy with one purpose showing.

THE COURT: I think so. I don't think the evidence admits an issue of two conspiracies.

MR. ZINNI: Is the court going to preclude

us from arguing that there may be more than one?

THE COURT: Yes. I surely am. Did you say more than one conspiracy?

MR. ZINNI: Yes.

THE COURT: Yes, because if you did, I would have to tell the jury here there is no evidence from which they could find two conspiracies. There is only one conspiracy, and this is not a case that -- anyway, you look at the evidence. It just is not admitted, two conspiracies.

MR. ZINNI: Again, I was thinking in terms, of course, of the matter of termination, withdrawal, abandonment.

THE COURT: That is all in it. I will charge on all that.

MR. ZINNI: But whether or not the jury can find that there may have been a new conspiracy formed later.

THE COURT: No. No. There is only one conspiracy.

MR. ZINNI: I would formally ask the court to do that.

THE COURT: I decline to do it.

MR. FERLAND: We made a --

THE COURT: You have an exception.

MR. ZINNI: Thank you.

MR. FERLAND: Your Honor, we made a formal request on equivocal inference charge. I know that the Second Circuit doesn't have it, but --

THE COURT: That was your request, that if the jury can find it either way, equal hypothesis thing, that they must select the one that is consistent with innocence. That is not the law. See United States against Holland in the Supreme Court.

MR. SANTOS: We join in that, your Honor.

THE COURT: I deny that one. I don't think the Supreme Court is likely to change that.

Any other specifically?

MR. WADE: Not to belabor the point, I want to make sure the court understands my position on Joost, and that is, that he is different now because of the acquittals, and our position would be that the reason he is different is that the jury having found him not guilty of the substantive offenses which underlie this conspiracy, that the court should not let the death resulting aspect go to this jury as a matter of law, not as a matter of fact.

THE COURT: I understand your position.

Your theory being the Government is collaterally estopped.

MR. WADE: That's correct.

THE COURT: I understand it, and I don't mean by any moment to belittle the point, and it is one that I have struggled with. In fact, I think the most recent case in the Second Circuit on the point is one of mine, the Calla case.

MR. WADE: Were you involved in that case, your Honor?

THE COURT: I was presiding judge in it and decided against collateral estoppel and was affirmed. I don't think so here. I don't think there is collateral estoppel. Albeit, it's a good argument. I would say it's a substantial argument. I don't think you're right.

MR. ZINNI: We are through with the matter of instructions. There are a couple of other matters I would like to bring up.

First of all, the indictment -- of course, the old indictment, does that go into the jury in this jurisdiction?

THE COURT: The old indictment?

MR. ZINNI: The original indictment, yes.

THE COURT: Ordinarily, I give them the

(At this time the jury entered the courtroom.)

THE COURT: That paper you have there is a form of verdict and I will come to it in due course in these instructions.

This has been a two week trial and I would like to begin by thanking you for your prompt attendance at each of our sessions and for the very careful attention you have given to the presentation of the evidence and to the closing arguments of counsel.

Now, all of us in this courtroom have different functions. It is the lawyers' function to present the case to you. It is my function to rule on matters of law and evidence that come up during the trial, and at this stage of the case it is my job to instruct you on the law that applies to this case. Now, I am the exclusive judge of the law. Once I was obliged to interrupt one of the lawyers. I didn't want to do that, but he had inadvertently mis-stated the law. You must accept the law as I give it to you, whether or not you agree with it, whether or not you think the law ought to be something different from what it is. In short, so far as the law goes in this courtroom, I am the Supreme Court.

Now, just as I am the exclusive judge of the law, you and you alone are the exclusive judges of the facts. You and you alone decide what weight, what effect and what value you will give to the evidence, you decide whether or not to believe a witness and, of course, ultimately whether each defendant in this case is guilty or not guilty of the charges made against him.

Now, you are not to conclude from any rulings that I have made throughout this trial or any questions that I asked that I have any opinion one way or the other as to whether any defendant in this case is guilty or not guilty. That decision is exclusively up to you.

Now, how do you go about finding the facts? Finding the facts is merely a process by which you, the jury, consider the exhibits which have been received in evidence, consider the testimony of all of the witnesses, both on direct and on cross examination, sift out what you believe, weigh it in the scale of your reasoning powers, discuss it with your fellow jurors and draw such conclusions as your experience and common sense tell you the evidence supports and justifies and decide just where the truth lies in this case.

Now, in this connection all evidence may be of two general types, direct evidence and circumstantial evidence. Evidence is direct when the facts are shown by exhibits which are admitted into evidence or when sworn to by witnesses who have actual knowledge of them from something that they have learned through the exercise of one of their fundamental senses such as sight, hearing, touch, smell, taste. Circumstantial evidence simply means the drawing of a logical conclusion or inference from other connected facts established by direct evidence. It's a process we all use in our daily lives and the process is no different here. You draw logical conclusions from other connected facts.

Now, no greater degree of certainty is required when evidence is circumstantial than when it is direct for in either case you must be convinced beyond a reasonable doubt before you can find any defendant guilty.

Now, it is your memory of the evidence that controls here. It's not the way I remember it and I don't intend to touch or summarize the evidence here at all. You have heard excellent summations by all the parties and I'm sure from

your own attention to the evidence as it was presented you know what the evidence is now. But I want to caution you that just as you are not bound by what I remember the evidence to be, you are not bound by what counsel believes it to be. If your memory of the evidence squares with the lawyers' memory, you may accept their version of the evidence, but to the extent that you have a different recollection, you are bound by your oath to rely on your own memory. Now, when I say your own memory, I mean your collective memory. If you can't remember the evidence, I'm sure that one of your fellow jurors can help to refresh your recollection. But if in the end that process doesn't refresh your recollection, you may through the person whom you elect to serve as your Foreman or Forelady send a note to me and I will have the Court Stenographer read the evidence back to you, but if you do that, make sure you pinpoint what you want and it will take us some time to find it and you have to hear it both on direct and on cross and on redirect. So use some restraint about that. See if your collective memory can't recall the evidence.

Now, one of your most important functions

is to decide which witnesses you will believe, and this is so as to every witness, whether called by the Government or by the Defense, and this also applies to Government Agents. You must give equal treatment to all of the parties and to their attorneys. The Government and its lawyers and witnesses are not entitled to any greater or less consideration than any defendant, his lawyer and witnesses.

Now, you are not to be influenced by the number of witnesses called. You are concerned not with the quantity of the evidence but with the quality of the evidence. The first test which you should apply in determining the trustworthiness of a witness is to measure what he says against your plain, every day common sense. You are not bound to believe unreasonable statements or to accept testimony that defies your own common sense or insults your intelligence just because the statements are made under oath by a witness in a public courtroom.

You saw the witnesses in this case. In deciding whether to believe a witness, you should consider not only what he said, but his conduct and his manner on the stand. I observed that you

were watching every single witness in this case with particular care as they were testifying. How did the witness impress you? Was the witness being frank with you or was he being evasive? Did his version of the evidence appear to be straightforward? Did he try to conceal any facts? Was he just parroting answers? Did he have any motive to testify falsely? Is he interested in any way in the outcome of this case? How strong or weak was his memory of important events? In short, can you rely on him? Can you trust him? Did he show any hostility or bias toward either side of this case? Was he friendly to any party in this case? You ought to consider his opportunity to know the facts about which he testified and the probability or improbability of what he said. How does his testimony add up or check out when considered with all of the other evidence, evidence independent of what the witness says? Are there any inconsistencies in his testimony and if so, how important are they? Has he made any inconsistent statement on some prior occasion and if so, how important is that inconsistency? And in considering whether he has made an inconsistent statement on some earlier occasion , you should consider not only what he said

on that earlier occasion, but what, if anything, he left out and if he left it out, whether he did so inadvertently or because he wasn't asked about it or whether he left it out intentionally.

Now, you will recall that the Government offered the testimony of Dr. Byall, a Chemist; Dr. Gross, a Medical Examiner; and Dr. Gleason, an Explosives Expert. The Defendants offered the testimony by Dr. Sullivan, Marrapese's Psychiatrist. These witnesses all gave their opinions with respect to certain facts and issues in this case. Those opinions were received in evidence to help you in technical fields where most of us have no knowledge or experience. You may, of course, and you should, of course, give consideration to those opinions, but you are not bound by them. They serve merely to help you understand the evidence in the case. It is your function to weigh the evidence and the ultimate value of the experts' opinions, and that in turn depends upon the facts which you, the jury, find established by the underlying testimony of other witnesses and the exhibits which have been received in evidence.

Now, Marrapese testified that he participated with the defendants and others in the

crimes charged here, that he agreed to cooperate with the Government after he was convicted and sentenced to life imprisonment, and that before he gave any testimony his sentence was reduced from life to six years. He also testified that he has not been prosecuted for certain other crimes which he admitted and that he committed perjury when he was on trial in the M-16 case.

Now, obviously, a witness is not incapable of telling the truth about what occurred simply because he claims to have been an accomplice in a crime or because he is an informer or because he has committed perjury on a prior occasion. But you must in light of those facts examine Marrapese's testimony with special care and act upon it with caution.

In the prosecution of a crime the Government is frequently called upon to use persons who are accomplices, informers and perjurers. Often it has no choice. They are properly used. After all, the Government must rely upon witnesses to the transactions, whoever they are. Otherwise, in many instances it would be difficult to detect and prosecute wrongdoers, and this is particularly so in cases of conspiracy. Frequently it happens

that only those on the inside can give evidence which is material and important to the case. There is no requirement that the testimony of such a witness be corroborated; that is, that it be supported or backed up by other evidence. Conviction may rest upon the testimony of an informer, a perjurer or an accomplice alone if you, the jury, believe that testimony. Nevertheless, in determining the credibility of a witness such as Marrapese, you should consider whether his testimony rings true when checked out with all of the other evidence. The credibility of Marrapese like that of all of the witnesses in this case is for you and you alone to determine, taking into account any interest he may have in the outcome of the case, any motive he may have, any inducement or benefit he has received or may hope to receive in the future from the Government, and any hostility he may bear toward any defendant and any other evidence which you recall and believe may tend to influence or color his testimony.

Now, the witnesses, Marrapese, Moore, Klausenberg and Klein testified that they had been convicted of crimes in the past. You should consider that fact in determining the credibility

of all of those witnesses.

The Defendant, Zinni, did not take the stand. A Defendant is not required to take the stand and to testify in his own behalf. He has no burden of proof to sustain in this case. He has denied the charges made against him by his plea of not guilty, and he is presumed to be innocent. The fact that he has not testified cannot be taken into consideration by you in any manner. You may not permit that fact to weigh in the slightest degree against the Defendant, Zinni, nor should that fact enter into your deliberations or discussions in any way whatever.

The Defendants Guillette and Joost did take the stand and testify as witnesses in their own behalf. Neither was required by law to do so, and his appearance as a witness was entirely voluntary on his part. If he had not testified, his failure to do so could not have been considered by you in any manner in determining his guilt or innocence. But having testified the law requires that his testimony be judged and appraised by the same standards applied to the testimony of any other witness, giving consideration, of course, to his background, to his intelligence, to his

personality and to his natural interest in the outcome of this trial.

The Defendants Guillette and Joost also testified that they have been convicted of crimes in the past and there has been testimony implicating all of the defendants in criminal activity for which they are not on trial in this case. For example, there was evidence that all of the defendants were indicted, arraigned and that some of them were convicted in the so-called M-16 case. That evidence may be considered as bearing on whether the defendants have a motive to commit the crimes charged in this indictment. You may also consider the fact that the Defendants, Guillette and Joost had been convicted of crimes in determining their credibility and the weight to be given to their testimony.

And in view of Mr. Zinni's summation, there is testimony here now to the effect, and I believe Mr. Marrapese testified to it as well, that Mr. Zinni has been convicted of other crimes, specifically, the M-16 case and some sort of a case over in Providence. You should consider that fact in this case as well, but I want to emphasize that the Defendants are on trial only for the crimes

charged in this indictment. You cannot use evidence of other crimes simply to conclude that one or more of them is a bad person or for that reason ought to be convicted. Whether or not any Defendant ought to be convicted depends solely on whether his guilt of the crime as charged in this case has been proved beyond a reasonable doubt.

Now, if you find that any witness has deliberately and wilfully lied with respect to any material fact in his or her testimony offered at this trial, you may follow either one of two courses. You may accept as much of the witness' testimony as you believe, or if you wish, you may reject his or her entire testimony.

Now, before discussing the crimes charged here I want to remind you once again that an indictment is a mere accusation. It is not evidence of the truth of the charge made, and you are to draw no inference of guilt whatever from the mere fact that a Defendant has been indicted. An indictment simply means that the Defendant has been accused of a crime. Each Defendant has denied the charge made against him here either by a plea of not guilty or by a plea of not guilty and testimony on the stand. No

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Defendant has any burden of proof to sustain in this case. He is under no obligation to produce any witnesses or any evidence at all. He is presumed to be innocent, and this presumption of innocence continues throughout the trial and during the deliberations of the jury. This presumption of innocence is overcome when and only when the Government establishes the guilt of the Defendant beyond a reasonable doubt.

Now, what do I mean by beyond a reasonable doubt? As the phrase implies, a reasonable doubt is a doubt that is based upon reason, a reason which appears in the evidence or a reason which appears from the lack of evidence. It is not some vague, speculative, imaginary doubt, nor a doubt based upon what some jurors might regard as an unpleasant duty. The Government is not required to prove a Defendant guilty beyond every possible doubt nor to an absolute or mathematical certainty because such measure of proof is usually impossible in human affairs. You should review all of the evidence as you remember it, sift out what you believe, discuss it, analyze it, weigh and compare your view of the evidence with that of your fellow jurors. If that process

produce a solemn belief or conviction in your mind, such as you would be willing to act upon without hesitation if this were an important matter of your own, then you may say that you have been convinced beyond a reasonable doubt. But on the other hand, if your mind is waivering or so uncertain that you would hesitate before acting if this were an important matter of your own, then you have not been convinced beyond a reasonable doubt and your verdict must be not guilty.

Now, during this trial you have learned that there have been prior proceedings in this case. You are not to speculate on the nature or outcome of those prior proceedings or to draw any inference for or against any party from that fact.

Now, the indictment here is brief, and I will give you a copy as well as a form for your verdict which you hold in your hand. If you will follow me along now with that verdict form, you will notice that it contains four questions, but it will help you to remember that the indictment contains only three counts. Each of these counts in the indictment charges a separate offense or crime and each Defendant named in a count must be considered by

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you separately. The reason the verdict form contains four questions is because the first count of the indictment, in effect, charges two crimes, one of which is greater than the other. The greater crime is a conspiracy, an alleged conspiracy among Marrapese, Guillette, Joost, Zinni and others unknown to violate the civil rights of Daniel LaPolla by intimidating and silencing him from informing authorities or testifying in a federal case which resulted in LaPolla's death. The lesser crime is included within the greater crime so if you find a Defendant guilty of the greater crime, there is no need to consider Question 2 on the verdict form. As to that Defendant, by separately deciding whether he is guilty of the lesser crime since if you have found that he is guilty of the greater crime, you necessarily have found that he is guilty of the lesser included crime. So, therefore, as to any Defendant whom you find guilty in answering Question 1 of the form, you need not answer Question 2 as to that Defendant. You should, therefore, consider Question 2 on the verdict form and give separate consideration to the lesser crime only as to any Defendant found not guilty of the greater crime.

Now, the first four elements of the greater and lesser crime are the same, but the greater crime has a fifth element not included in the lesser one, namely, that death resulted from the conspiracy.

Now, the second and third counts, Question 3 and Question 4 are self-explanatory. They pertain, Question 3 to count two and Question 4 to count three.

The second count of this indictment charges Guillette with obstruction of justice, and the third count charges Guillette with the use of an explosive to commit a felony. Therefore, as to count two and three, Guillette is the only person whose guilt or innocence you must announce in your verdict on those counts, and you must not speculate or draw any inference concerning why Joost, Zinni or anyone else is not on trial before you as to count two and three.

Now, in the determination of guilt or innocence you must bear in mind that guilt is personal. There is no such thing in our system of law as guilt by mere association. The guilt or innocence of each Defendant must be determined separately with respect to him solely on the

evidence presented against him or on the lack of evidence. You will recall that during the trial certain evidence such as Marrapese's testimony about Guillette's statements to him in Amando's Restaurant in March of 1973 was admitted for your consideration only as to Guillette, but not as to the other Defendants. You should consider evidence which has been so limited as to the one Defendant in determining the guilt or innocence of that Defendant. But you must disregard such limited evidence in determining the guilt or innocence of the other Defendants. Likewise, you must also disregard any evidence which I have stricken during the course of the trial.

We will now come to the specific charges here. Count one of this indictment charges from on or about May, 1972 until on or about September 29, 1972 in the district of Connecticut and elsewhere, David Guillette, Robert Joost, William Marrapese and Nicholas Zinni, the Defendants herein and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to injure, oppress, threaten and intimidate one, Daniel LaPolla, a citizen of

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the United States in the free exercise and enjoyment of a right and privilege secured to him by the Constitution and laws of the United States and because of him having exercised such right and privilege, to wit, the right and privilege to give information to the proper authorities concerning violations of the gun control laws of the United States, and the right and privilege to be a witness in a judicial proceeding in the United States District Court for the District of Connecticut, to wit, the case of United States against William Marrapese, Nicholas Zinni, Robert Joost and David Guillette, Criminal No. H-264, and it is further alleged that this combination and conspiracy resulted in the death of Daniel LaPolla, all in violation of Section 241, Title 18, United States Code.

Now, count one of the indictment is based upon a federal law which is referred to there as Title 18, Section 241 which in pertinent part provides "If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so

exercised the same, each is guilty of a crime."

Count one charges in substance, therefore, that Guillette, Joost, Zinni, Marrapese, three of whom are Defendants on trial before you here, together and with William Marrapese and others to the Grand Jury known and unknown, did unlawfully, wilfully and knowingly conspire to injure, oppress, threaten and intimidate Daniel LaPolla, a United States citizen in the free exercise and enjoyment of a right and privilege secured to him by the Constitution and laws of the United States; that is, the right and privilege to give information to the proper authorities concerning violations of the federal gun control laws and the right and privilege to be a witness in a case which has been referred to throughout this trial as the M-16 gun case.

It is further alleged in count one that the conspiracy resulted in the death of Daniel LaPolla. Now, in order to convict a Defendant on count one the Government must prove to your satisfaction beyond a reasonable doubt each of the following five elements: (1) The existence of the conspiracy charged in the indictment to injure, oppress, threaten or

intimidate Daniel LaPolla; (2) That the conspiracy was directed at the free exercise or enjoyment by LaPolla of a right or privilege secured by the Constitution or laws of the United States; (3) That the Defendant joined the conspiracy with knowledge of its unlawful purpose; (4) That the intended victim, LaPolla, was a citizen of the United States; (5) That the conspiracy resulted in the death of LaPolla.

I will now explain what these elements mean. The first element of the crime is the existence of the conspiracy charged in the indictment to injure, oppress, threaten or intimidate Daniel LaPolla. The words "injure, oppress, threaten or intimidate" cover a wide variety of conduct intended to inflict death, bodily harm or to frighten other persons. Suffice it to say here that the types of conduct charged in the indictment are all prohibited. You have heard testimony that Marrapese, Guillette and Joost attempted to interview and gather evidence about Daniel LaPolla for use in their trial in the M-16 gun case. Now, in weighing this testimony, and here I am referring to the wake, the funeral and the flights, you must keep in mind that a

Defendant or his attorney has a right to make every reasonable effort to interview any witness whom he thinks might be of assistance in the preparation of his case, even though he knows that the Government expects to call that witness. Any lawyer who failed to make that effort would be derelict in his duty. But, obviously, no Defendant and no lawyer has a right to stalk, harass, intimidate, oppress, threaten, frighten, bribe, harm, kill or interfere with a witness to silence him from informing the proper authorities about a crime or to prevent him from testifying in a trial or other judicial proceeding. Any such conduct is prohibited and if done intentionally it is criminal. If the Defendants and others had a common understanding that any of these means were to be used to prevent LaPolla from informing authorities about federal crimes or from testifying in federal proceedings, then the conspiracy was one to injure, oppress, threaten or intimidate LaPolla. Such a conspiracy is a violation of the law. In determining whether the alleged conspiracy was designed or intended to use any such prohibited means you should consider and weigh the undisputed fact that at the times involved the Defendants were

indeed under indictment in the M-16 gun case and that LaPolla was expected to be a prosecution witness at their trial which was fast approaching.

Now, what is a conspiracy? A conspiracy for your purposes is simply a combination or an agreement among two or more people to commit a crime as charged in the indictment. Thus a conspiracy is a kind of partnership in criminal purposes in which each member becomes the agent of every other member. The gist of the crime is the combination or agreement to violate the law. Now, this does not mean that two or more people must meet and sign some kind of a formal agreement or that they must sit down and agree in so many words on what their unlawful plot or plan is to be or precisely how they are going to carry it out. When persons enter into a combination or agreement to commit a crime, obviously, much is left to implication and to tacit understanding. Conspirators do not proclaim their unlawful plans or publicly announce their criminal purposes. The very nature of a criminal conspiracy usually calls for secrecy and intrigue.

The first element, the existence of the unlawful conspiracy is satisfied therefore if you

find beyond a reasonable doubt that two or more people, any two or more people in any way intentionally combined or agreed to a common plan to injure, oppress, threaten and intimidate LaPolla for the purpose of preventing him from testifying in the M-16 case or for the purpose of harming him for having already given information to the federal authorities resulting in the Defendants' indictment. Now, in determining whether there was such a combination, understanding or agreement, you should consider all the evidence about each Defendant's conduct, acts and statements. You should consider not only what he said or did, but also the way he said or did it. Actions speak louder than words. You should therefore ask yourself whether the acts of the Defendants were open and straight-forward, whether they dove-tailed or paralleled with the acts of others in time and sequence in light of all the surrounding circumstances, and whether they were surrounded by that secrecy and intrigue which are the hallmark of a conspiracy.

From the point of view of the law there is danger to the public when two or more people combine to commit a crime. The danger is greater than when the lone criminal acts by himself because

in numbers there is strength and two or more people are able to accomplish crimes that are more complicated and harmful to the community. Because of this a conspiracy to commit a crime is a distinct crime in and of itself, separate and apart from the crime which it is the object of the conspiracy to accomplish. Thus a conspiracy may be found to exist although the purpose of the conspiracy is never accomplished.

The period of time charged in the indictment runs from in or about May, 1972 until on or about September 29, 1972. It is not necessary for the Government to prove that the conspiracy alleged started and ended on those specific dates, except that the conspiracy resulting in the death of Daniel LaPolla necessarily ended with his death on September 29, 1972. It is sufficient if you find that a conspiracy was formed and that it existed for some substantial time within the period set forth in the indictment.

Now, you will recall that the second element of the crime of conspiracy which the Government is required to prove beyond a reasonable doubt is that the conspiracy was directed at the free exercise or enjoyment by LaPolla of a right

or privilege secured by the Constitution or laws of the United States. The right and privilege to give information to the proper authorities about violations of the federal gun control laws and the right and privilege to be a witness in a federal judicial proceeding are rights and privileges protected by the Constitution and the laws of the United States. Therefore, if you find that any defendant agreed or conspired with others with the specific intent to silence LaPolla by killing, beating, assaulting, threatening, bribing, intimidating or otherwise abusing him because he had given information to the proper authorities concerning violations of the federal gun control laws or had appeared before a Grand Jury or in order to prevent him from testifying in a pending criminal case against the defendants in a federal court up here in Connecticut, then the conspiracy was directed at the free exercise and enjoyment of a right secured to LaPolla by the Constitution or laws of the United States, and the second element of the crime is satisfied.

You will recall that the third element which the Government is required to prove beyond a reasonable doubt is that a defendant joined the

conspiracy with knowledge of its unlawful purpose. Now, when I say joined the conspiracy, I do not mean that he has to file some kind of a formal application for membership or that he has to sit down with others and agree in so many words, "Count me in", but before one can be found to be a conspirator, he must know of the existence of the conspiracy and of its purpose, and he must voluntarily and knowingly join with others in a common plan and with an intent to promote its unlawful purpose. Here the defendant whom you are considering must intend to join with others in a common plan to deprive LaPolla of his right and privilege to give information to the authorities about violations of the gun control laws or to harm him because he had testified before a Grand Jury or to silence him from testifying in the approaching trial of the M-16 case.

Now, if for example a defendant joined a conspiracy to threaten, harm or kill LaPolla to settle some kind of a personal grudge, that would not satisfy this element of the offense. However, you need not find that a defendant was thinking in terms of constitutional rights or constitutional privileges or even that he knew the right of which

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he was intending to deprive LaPolla was a right protected by the Constitution or laws of the United States or for that matter, whether or not he knew that his conduct violated the law. The unlawful attempt is established if you find beyond a reasonable doubt that the defendant whom you are considering understood that the common purpose of the conspiracy was to intimidate, threaten, harm or kill LaPolla because he had given information to the authorities or to prevent him from becoming a witness in a federal prosecution.

Now, the mere fact that a defendant may know that others have formed a conspiracy or be present when other people were talking about the conspiracy or have a friendship, an employment or association or any kind of a business relationship with another member of the conspiracy is not in itself enough to make him a conspirator unless you first find that he knew of the existence of the conspiracy and of its purpose, and voluntarily and knowingly joined with others in a common plan with an intent to promote its unlawful purpose.

You will note that the indictment charged that the defendants acted unlawfully, wilfully and knowingly, that they unlawfully, wilfully and

knowingly did combine and conspire and confederate and agree together. The term "unlawfully" simply means that a defendant's conduct is prohibited by law. It does not mean that he must know that his conduct is prohibited by law. The term "knowingly" simply means that a defendant must be aware what he is doing and that he acts freely and voluntarily, deliberately or on purpose and not because of some mistake, accident, negligence, carelessness or other innocent reason. The term "wilfully" means only that the defendant acted of his own free will, that he wasn't forced or coerced into this, that he acted voluntarily, and that he knew what he was doing and that he acted intentionally and on purpose. Here it means that the defendant acted with a specific intent to threaten, harm or kill LaPolla because he had given information to the authorities or had appeared before a Grand Jury or in order to silence LaPolla from testifying in the M-16 gun case.

Now, the key to this element of the crime is a defendant's guilty knowledge and intent. In determining the guilt of a defendant it is, obviously, impossible to look into his mind. However, intent and knowledge may be inferred

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from the way a defendant acts and by what he says in the context of all of the surrounding circumstances. Thus, once again, the adage "actions speak louder than words" applies here. In determining intent, therefore, you should consider all the evidence that you recall and believe as to what a defendant said, what he did or failed to do and the way he acted or failed to act in the context of all of the surrounding circumstances. You should also consider the timing and sequence of his statements and acts in relation to the timing and sequence of the acts of others and to the events in the M-16 case. In short, consider how he conducted himself, were his actions open, above board and innocent or were they secret, furtive and devious? Does his conduct as shown by the evidence reveal a consciousness of guilt on his part or does it speak of an innocent state of mind? You should also consider his knowing participation in any of the acts or circumstances which you believe show the existence of a conspiracy.

The key question on this element is whether the defendant was consciously working with others to harm or kill LaPolla or to frighten him because he was giving information to the authorities

concerning violation of the gun control laws or because he had appeared before a Grand Jury or to prevent him from testifying in the upcoming M-16 trial.

Now, one can become a member of a conspiracy without knowledge of all of the details or all of the operations of the conspiracy. One defendant may know only one other member of the conspiracy, yet if he knowingly cooperates with any other person to further the illegal purposes of the conspiracy with knowledge that others have combined to violate the law, he becomes a member although his role may be only an insignificant or subordinate one. If you find that a defendant did join the conspiracy with knowledge of its illegal purpose then he is bound by what other members say and do after he becomes a member, provided what the others say and do is within the scope and purpose of the conspiracy as the defendant understands its purpose and its scope. And this is so even though he is not present provided he has not withdrawn from the conspiracy. Each conspirator is the agent or partner of every other conspirator. What one does to promote the illegal plan or illegal agreement binds every other member

of the conspiracy.

Now, you will note that I have said that every member of a conspiracy is bound by the acts of any other member of the conspiracy provided those acts are within the scope of and in furtherance of the purposes of the conspiracy as the defendant whom you are considering understood the scope and purposes. In short, a defendant does not, as Mr. Coffey during his summation unfortunately and erroneously suggested, take his chances that any conspirator is going to change the terms of the conspiratorial agreement, nor is he bound by the act of any co-conspirator who goes outside the scope of the conspiracy and who does something not in furtherance of the common purpose of the conspiracy to which the defendant whom you are considering has agreed.

In deciding whether a defendant joined the conspiracy, you must base your decision not on what others may have said or done, but only upon what the defendant himself said or did. In other words, on the question of membership in a conspiracy you can only consider a defendant's own actions, his own conduct and his own statements.

Now, of course, the defendants contend

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that the conspiracy charged here never existed, that it was never formed. But further they contend that even if you should find that the conspiracy was formed and existed, that the conspiracy terminated shortly after May 8th when according to Marrapese it was decided to try to bribe or beat LaPolla to keep him from testifying.

The Government contends that the conspiracy continued, that the plan to kill LaPolla was simply kept in reserve and that it culminated in the killing of LaPolla on September 29th.

Now, the law says that once a conspiracy is formed it is presumed to continue unless it appears from affirmative evidence that the conspiracy has been brought to an end or terminated. Moreover, the participation of any one or more members of the conspiracy can terminate if he or they withdraw from the conspiracy. Termination of a conspiracy means it is completely brought to an end. A conspiracy does not terminate if its objective is merely delayed, deferred or postponed pending other developments. Withdrawal from a conspiracy occurs when a person makes a clean breast of the plan to law enforcement authorities or reaches an understanding that he will no longer

participate with members of the conspiracy or gives notice, reasonably calculated to reach other members of the conspiracy that he is no longer a participant. Merely doing nothing or mere cessation of activity in furtherance of the conspiracy, however, is not sufficient to show a withdrawal. While the Government has the burden of proof to establish each element of the crimes charged beyond a reasonable doubt, the burden of proof is upon a defendant to establish termination of a conspiracy or his withdrawal from it.

In this case the defendants further contend that even if a conspiracy to kill LaPolla was formed, which they dispute, it ended when the gun was taken back from Housand, and the claim is made that even if it continued, some or all of the defendants withdrew from it on the theory that they understood it was ended.

Now, if you find that the conspiracy was formed but ended sometime before LaPolla's death on September 29th, then any defendant whom you find to have become and remained a member of the conspiracy until the time of its termination can be found guilty of the lesser crime of conspiring to intimidate, but he cannot be found

guilty of the greater crime of conspiring to intimidate with death resulting. In other words, if the conspiracy ended before LaPolla's death, then all of the members at that time, that is, at the time the conspiracy ended, can be found guilty of the lesser crime of conspiracy to intimidate but not of the greater crime of conspiracy resulting in death. Similarly, if you find that any defendant joined the conspiracy but withdrew from it prior to the death of LaPolla, then that defendant can be found guilty only of the lesser crime of conspiring to intimidate, but cannot be found guilty of the greater crime of conspiring to intimidate with death resulting.

Now, the Government contends that the conspiracy never terminated until the death of LaPolla and that no members of the conspiracy ever withdrew. The Government contends that at most a decision was reached to defer the killing of LaPolla to see if less drastic means of silencing him would suffice. The various contentions of the parties create the factual disputes that you must resolve in light of the evidence.

Of course, a defendant who joins and remains a member of a continuing conspiracy to kill

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is responsible for the resulting death even though the technique of the killing has shifted from shooting to dynamiting, even though the person in the role of the assassin is changed, and even though the defendant is not present, provided the killing was the result of an act of any other member of the conspiracy in furtherance and within the scope and purpose of the conspiracy as the defendant understood its scope and purpose. A conspiracy may continue with some members even if one or more withdrew and even though the members remaining are persons other than defendants. In other words, the withdrawal of one member does not terminate a conspiracy so long as at least two members remain. There must be at least two to conspire.

You will recall that the fourth element which the Government is required to prove beyond a reasonable doubt is that the intended victim, LaPolla, was a citizen of the United States. There is uncontradicted evidence here that LaPolla, the alleged victim, was an American citizen. Therefore, there is no dispute as to this element, and you are instructed that if you find the existence of a conspiracy that conspiracy was directed against

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a citizen of the United States.

You will recall that the fifth element which the Government is required to prove beyond a reasonable doubt is that the conspiracy resulted in the death of LaPolla. Now, there is no dispute in the evidence that LaPolla met his death on September 29, 1972. The question for you, therefore, is whether LaPolla's death resulted from the conspiracy charged in this indictment. Death results from the conspiracy charged in the indictment if it was caused by an act of one or more of the conspirators in furtherance of the purpose of the conspiracy.

Death, whether accidental or intentional, does not result from the conspiracy if caused by LaPolla's own act, unrelated to the conspiracy or its purposes provided the death was not induced or brought about by some act of a conspirator in furtherance of the purposes of the conspiracy. Likewise, death, whether accidental or intentional, does not result from the conspiracy if caused by the acts of any person who was not a member of the conspiracy or even if it were caused by a member of the conspiracy but not in furtherance of its purpose or within the scope of the conspiracy.

You must consider each defendant separately. If you find as to the defendant whom you are considering that the Government has failed to prove beyond a reasonable doubt all five of the elements of the crime of conspiracy resulting in death, then you must find that defendant not guilty in your answer to Question No. 1 on the verdict form.

On the other hand, if you find as to the defendant whom you are considering that the Government has proved beyond a reasonable doubt each of the five elements of the crime of conspiracy resulting in death, then you should find that defendant guilty in your answer to Question No. 1 on the verdict form.

Now, if you find the defendant whom you are considering guilty of the greater crime of conspiracy resulting in death, you do not need, as I have told you earlier, to answer Qestion No. 2 on the verdict form with respect to that defendant. If, however, you do not find a defendant guilty of the greater crime of conspiracy resulting in death, then you must go on to consider whether that defendant is guilty of the lesser crime of conspiracy to intimidate and state your verdict as to him in answering

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Question No. 2 on the verdict form. Here in answering Question No. 2, since death resulting is no longer an element, you need only consider the first four elements of the crime as I have given them to you.

Now, if as to the defendant whom you are considering you find that the Government has failed to prove beyond a reasonable doubt all of the first four elements of the lesser crime of conspiracy to intimidate, you must find that defendant not guilty of the lesser crime of conspiracy to intimidate in your answer to Question No. 2 on the verdict form. On the other hand, if you find as to the defendant whom you are considering that the Government has proved beyond a reasonable doubt all four elements of the lesser crime, then you should find that defendant guilty of the lesser crime of conspiracy to intimidate in your answer to Question No. 2 on the verdict form.

This brings us to count two of the indictment. Count two is based upon a federal law which in pertinent part provides "whoever by threat or force endeavors to influence, intimidate or impede any witness in any court of the United States or injure any party or a witness in his person or

property on account of his attending such court shall be guilty of a crime." Count two charges what we lawyers call obstruction of justice. It charges in substance that the defendant Guillette wilfully and knowingly endeavored by force and violence to influence, intimidate and impede LaPolla, a witness in a federal case, which has been referred to here as the M-16 case. In order to convict Guillette on count two, the Government must prove to your satisfaction beyond a reasonable doubt each of the following elements: First, that Guillette knew that a proceeding was pending in a federal court in Connecticut, namely, an indictment against Marrapese, Guillette, Joost and Zinni in what we have referred to here as the M-16 gun case. As to this element, there is no dispute that Guillette was one of the defendants in the M-16 gun case which was pending in a federal court in Connecticut, and that he knew it. The second element is that the defendant knew that LaPolla was expected to be called as a witness in the M-16 gun case. As to this element it is for you to decide whether Guillette knew that LaPolla was expected to be called as a witness upon the trial of the M-16 gun case. The third element is that the

defendant unlawfully, wilfully and knowingly endeavored by force and violence to influence, intimidate or impede LaPolla or injure him in his person for having testified before a Federal Grand Jury or to prevent him from testifying in the M-16 gun case. As to this element you will recall and apply my earlier instructions as to when a defendant's conduct is unlawful, wilfull and knowing. The word "endeavor" as used here means trying to accomplish something. It is not necessary for the Government to prove that the endeavor was successful or that Guillette actually did intimidate LaPolla. It is sufficient if the Government proves a deliberate, intentional, purposeful try on Guillette's part by force and violence to prevent LaPolla from testifying at the M-16 trial. Whether Guillette had such an intent is for you to decide from the evidence as to what he said and did in light of all the surrounding circumstances.

If after considering all of the evidence you find that the Government has failed to prove beyond a reasonable doubt all three elements of the crime of obstruction of justice as I have just defined them, then you must find the defendant,

Guillette, not guilty on count two in answer to Question No. 3 on the verdict form.

On the other hand, if after considering all of the evidence you find that the Government has proved beyond a reasonable doubt each of the three elements of the crime of obstruction of justice as I have defined them, you should find the defendant, Guillette, guilty on count two in answer to Question No. 3 on the verdict form.

Now, count three of the indictment is based upon a federal law which provides "whoever uses an explosive to commit any felony which may be prosecuted in a court of the United States shall be guilty of a crime." Count three charges in substance that the defendant, Guillette, wilfully and knowingly used an explosive, that is, a dynamite bomb, to commit a felony prosecutable in a federal court, namely, the felony of endeavoring by force and violence to influence, intimidate or impede LaPolla or of injuring him in his person for having testified before a Grand Jury or to prevent him from testifying on the trial of the M-16 gun case, thus impeding, obstructing and influencing the due administration of justice.

In order to convict the defendant,

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Guillette, on count three, the Government must prove to your satisfaction beyond a reasonable doubt each of the following elements: First, that the defendant did commit the felony charged in count two, i.e., that Guillette is guilty of endeavoring by force and violence to influence, intimidate or impede LaPolla or to injure him in his person for having testified before a Federal Grand Jury or to prevent him from testifying in the M-16 case.

If you have found that the defendant, Guillette, is not guilty on count two, obviously, he cannot be found guilty and you may not find him guilty on count three.

The second element is that the defendant in committing the felony charged in count two did on September 29, 1972 use an explosive, that is, a dynamite bomb. The term "explosive" includes any explosive bomb and, obviously, includes an explosive device containing dynamite. If after considering all of the evidence you find that the Government has failed to prove beyond a reasonable doubt that the defendant, Guillette, is guilty of the crime charged in count two or has failed to prove that he used an explosive device in committing the crime charged in count two, then you must find the defendant,

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Guillette, not guilty on count three in your answer to Question No. 4 on the verdict form.

If on the other hand you find that the Government has proved beyond a reasonable doubt that the defendant, Guillette, is guilty of the crime charged in count two and that he did use an explosive device in committing the crime charged in count two, then you should find the defendant, Guillette, guilty on count three in your answer to Question No. 4 on the verdict form.

Now, the question of possible punishment of a defendant in the event of a conviction is no concern of yours, and it should not in any sense enter into or influence your deliberations. The duty of imposing sentence in the event of a conviction rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of the defendant, solely upon the basis of that evidence.

When you retire to the jury room, elect one of your number to serve as your Foreman or Forelady and to speak for you in your verdict or in any communications with the Court. Treat one another with consideration and respect as I know you will. If differences of opinion arise,

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discussions should be dignified, calm, intelligent. Your verdict must be based on the evidence and the law, the evidence which was presented in this case as you remember it, and the law as I have given it to you in this charge. You are each entitled to your own opinion. No juror should acquiesce in a verdict against his individual judgment. Nevertheless, I would point out that no juror should enter the jury room with such pride of opinion that he would refuse to change his or her mind no matter how convincing or intelligent the argument of another juror or jurors. Discussion and deliberation are the very foundation of our democratic jury process and your deliberation should be approached in that spirit. Talk out your differences. Each of you should, in effect, decide the case for himself or herself after thoroughly reviewing the evidence and frankly discussing it with your fellow jurors, with an open mind and with a desire to reach a verdict. If you do that, you will be acting in the true spirit of the American jury process.

There are twelve of you on this jury. The alternates will be excused with the thanks of the Court before you retire for your deliberations.

Any verdict must be a unanimous verdict of all of you as to each defendant separately, and it must represent the honest conclusion of each of you.

I submit the case to you with every confidence that you will fully measure up to the oath which you took as members of the jury to decide the issues submitted to you fairly and impartially and without fear or favor.

Now, members of the jury, if you find that the Government has failed to establish the guilt of any defendant beyond a reasonable doubt, that defendant should be acquitted. If you find that a defendant has not violated the law, you should not hesitate for any reason whatever to render a verdict of not guilty as to him. But on the other hand, if you find that the Government has established the guilt of a defendant beyond a reasonable doubt, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

Your Foreman or Forelady, therefore, will return an oral verdict in open court as to each count as to each defendant named in that count of guilty or not guilty.

Are there any exceptions, gentlemen?

If so, I will hear you at the side bar.

(The following transpired at the Bench out of the hearing of the jury)

MR. WADE: On behalf of the Defendant, Joost, our concern would be the way the charge has gone in as to him. It permits this jury to, in effect, take the law into its own hands by saying "We don't believe Marrapese and we don't believe there was a May 8th meeting, but he did some bad things like flying around in the airplane and going to the wake, and that's going to be sufficient for us to convict him on the second count."

Now, the reason I say that is that in charging on the second count you failed to mention that the intimidation alleged in the second count --

THE COURT: The second count? I didn't charge the second count as to Joost.

MR. WADE: That is what I am getting at, Your Honor. You failed to allege that the intimidation alleged against Guillette is alleged to have occurred in Connecticut, you see, and it is limited to in Connecticut. Now, the way Judge Newman handled that was --

THE COURT: It was wrong.

MR. WADE: -- back to the May 8th meeting.

THE COURT: I note your exception. I think I understand it. It's the venue point and --

MR. WADE: Well, more than that. It would include the wake and going to the funeral as not being active intimidation, you see, because even Guillette is not charged with that.

THE COURT: I note your exception.

MR. WADE: And, of course, our concern is that in view of the previous verdicts there is a blending effect here that neither you nor I can do much about unless there is a severance, but that's another issue.

THE COURT: You already had your ruling on that.

MR. WADE: Right. All right. Then while the Court did charge that there must be an understanding of parameters of the conspiracy, it would be our position that in charging on termination and the back burner theory that in order to back off the back burner, you must show that there was a new agreement that rose to the level of death. In other words, even if you found that there was the conspiratorial meeting of May 8th --

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THE COURT: I have your point. I understand it and note your exception and add that I charged this because the defendants requested it.

MR. WADE: Yes. I understand that and we appreciate the charge as given. What I am saying is if you are going to bring it back off the back burner, you must tell them there has to be that intent to bring it off the back burner.

THE COURT: Well, there was no such request. Even if there were, I would have declined to give it. I certainly decline to do it now.

MR. WADE: To keep our record intact, we would take exception to the Court directing the jury as a matter of law that being a witness and giving evidence is a privilege protected by the Constitution, and that is our Pacelli claim that we are raising there.

THE COURT: Exceptions noted.

MR. WADE: That's all I have.

THE COURT: Thank you, Mr. Wade. Mr. Santos.

MR. SANTOS: I join in the remarks of Mr. Wade, and I would only add, of course, that the Court did not charge that they have to find a homicide. I would take exception.

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THE COURT: Yes. Exception noted.

MR. SANTOS: I also would take exception to the Court's suggestion that accidental death induced by an act or acts of the co-conspirators would satisfy the death resulting aspect. That is the way I heard it.

THE COURT: That is the way you heard it. That was right.

MR. SANTOS: I take exception to that also.

THE COURT: I note your exception.

MR. ZINNI: Your Honor, I wish to adopt the objections of both Mr. Wade and Mr. Santos and add a couple further. Objection to so much of the charge that relates to the inclusion of bribery as being an element of intimidating and oppressing a witness.

THE COURT: I note your exception.

MR. ZINNI: Further, I would object, Your Honor, please to the Court's instructing the jury to use some restraint about asking that the testimony be read.

THE COURT: Your exception is noted.

MR. ZINNI: Thank you. And then to that portion of the charge which deals with the one or

more defendants given credence to a greater force, to a greater crime as being unduly prejudicial.

THE COURT: I don't recall any such charge, but whatever it is, I note your exception.

MR. ZINNI: Thank you. And I further take exception, Your Honor, please to the Court's instruction that it is not necessary that the Government show that a conspiracy formed on specific dates.

THE COURT: Your exception is noted.

MR. FERLAND: One other thing, the fact that when you listed the five elements, you did not tell the jury that if one element is missing, they have to find them not guilty.

THE COURT: Your exception is noted.

MR. ZINNI: Thank you, Judge.

MR. COFFEY: I might just point out, Your Honor, the only thing I had in my notes was I think that when the Court was talking about count three, it did --

THE COURT: About what?

MR. COFFEY: Count three. It mentioned that if the jury found that all counts were not found beyond a reasonable doubt, they should find them not guilty and --

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THE COURT: I never lumped all counts together, Mr. Coffey.

MR. COFFEY: Okay.

(The following transpired before the jury.)

THE COURT: The alternates are dismissed. Let the alternates go first. Get your hats and coats and don't talk about the case now with anyone.

As soon as the alternates are out, bring out the jury. Just a minute. Just a minute. Would you come out, please, Mr. Marshal? Raise your right hand. Get all that are going to be working.

THE CLERK: Raise your right hands. You swear that you shall well and truly keep this jury in some convenient and private place, you shall not suffer any person to speak to them, nor shall you speak to them yourselves unless it be to ask them if they are agreed upon their verdict without leave of court, so help you God.

(The three Marshals answered affirmatively.)

THE COURT: All right. You may retire now.

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back then.

THE COURT: All right.

MR. COFFEY: It is hereby agreed by the Government and the Defense that we have just had a chance to inspect both the full Government exhibits and the full Defense exhibits and each full exhibit has been put in an appropriate box and has been submitted to the jury correctly.

MR. SANTOS: Right. Defendant Guillette concurs.

MR. FERLAND: Defendant Zinni concurs.

MR. JOOST: I concur in all the exhibits.

MR. ZINNI: I concur.

(Whereupon, court recessed at 4:10 p.m.)

(The following transpired in Chambers at 6:40 p.m.)

MR. JOOST: Good evening, Your Honor.

THE COURT: Good evening, Mr. Joost. All right. I have a note here from the jury. "We would like to request explanation of count one, Question No. 1 and No. 2 by His Honor."

I don't know what they want to know and I propose if no one objects simply to write on the bottom of this "What do you want to know? Please

advise me what information you want."

MR. SANTOS: I have no objection.

THE COURT: Or words to that effect.

Here's what I have written. "Please specify what you want to know. Judge MacMahon"

MR. WADE: Can they read the handwriting, Judge?

THE COURT: That's a legitimate question. I think so. Would you hand it back to them?

THE MARSHAL: Yes, sir. Do you want me to wait for an answer, Judge?

THE COURT: Yes. Tell them if they have any question, put it in writing and give it to me.

THE MARSHAL: Yes, sir.

(At this time the Marshal left the Chambers momentarily and returned and handed note to the Court.)

THE COURT: All right. "We would like the interpretation of the law on count one. Example, the elements needed to be considered."

All right.

MR. SANTOS: That sounds like the charge.

THE COURT: That's right. Here we go.

(The following transpired in open court.)

(The jury entered the courtroom at

6:55 p.m.)

THE COURT: Good evening. I realize it's close to the dinner hour and your note, Mr. Dina, isn't quite clear to me so if you will just raise your hand when you have heard enough that answers whatever is on your mind. All right.

In order to convict a defendant on count one, the Government must prove to your satisfaction beyond a reasonable doubt each of the following elements, every one of them: The existence of the conspiracy charged in the indictment to injure, oppress, threaten or intimidate Daniel LaPolla; Two, that the conspiracy was directed at the free exercise or enjoyment by LaPolla of a right or privilege secured by the Constitution or laws of the United States; Three that the defendant joined the conspiracy with knowledge of its unlawful purpose; Four that the intended victim, LaPolla, was a citizen of the United States; Five, that the conspiracy resulted in the death of LaPolla.

I will now explain what these elements mean. The first element of the crime is the existence of the conspiracy charged in the indictment to injure, oppress, threaten or intimidate Daniel LaPolla. The words injure, oppress, threaten

or intimidate cover a variety of conduct intended to inflict death, bodily harm or to frighten other persons. Suffice it to say that the types of conduct charged in the indictment are all prohibited.

You have heard testimony that Marrapese, Guillette and Joost attempted to interview and gather evidence about Daniel LaPolla for use in their trial in the M-16 gun case. In weighing this testimony you must keep in mind that a defendant or his attorney has a right to make every reasonable effort to interview any witness whom he thinks might be of assistance in the preparation of his case, even though he knows that the Government expects to call that witness. Any lawyer who failed to do that would be derelict in his duties. But, obviously, no defendant or lawyer has a right to stalk, harass, intimidate, oppress, threaten, frighten, bribe, harm, kill or interfere with a witness, to silence him from informing the proper authorities about a crime or to prevent him from testifying in a trial or other judicial proceeding. Any such conduct is prohibited and if done deliberately, criminal. If the defendants and others had a common understanding that any of those means were to be used to prevent LaPolla from

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informing authorities about federal crimes or from testifying in federal proceedings, then the conspiracy was one to injure, oppress, threaten or intimidate LaPolla.

In determining whether the alleged conspiracy was designed to use any such prohibited means you should consider and weigh the undisputed fact that at the times involved the defendants were under indictment in the M-16 gun case and that LaPolla was expected to be a prosecution witness at the trial which was fast approaching.

Now, what is a conspiracy? A conspiracy for our purposes is simply a combination or an agreement among two or more people to commit a crime. Thus a conspiracy is a kind of partnership in criminal purposes in which each member becomes the agent of every other member. The gist of the crime is the combination or agreement to violate the law. This does not mean that two or more persons must meet and sign a formal agreement or that they must sit down and agree in so many words on what their unlawful plan is to be or how they are going to carry it out. When persons enter into a combination or agreement to commit a crime, much is left to implication and to tacit understanding.

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Conspirators do not proclaim their unlawful plans or publicly announce their criminal purposes. The very nature of a criminal conspiracy usually calls for secrecy and intrigue.

The first element is satisfied, therefore, if you find beyond a reasonable doubt that two or more people in any way intentionally combined or agreed to a common plan to injure, oppress, threaten and intimidate LaPolla for the purpose of preventing him from testifying in the M-16 case or for the purpose of harming him for having already given information to the federal authorities resulting in the defendants' indictment.

Now, in determining whether there was such a combination, understanding or agreement here you should consider all the evidence about each defendant's conduct, acts and statements. You should consider not only what he said or did, but also the way he said or did it. Actions speak louder than words. You should, therefore, ask yourself whether the acts of the defendants were open and straightforward, whether they dove-tailed or paralleled with the acts of others in time and sequence in light of all the surrounding circumstances and whether they were surrounded by that secrecy and

intrigue which are the hallmark of a conspiracy.

From the point of view of the law there is danger to the public when two or more people combine to do something that is unlawful. The danger is greater than if the lone criminal acts by himself because in numbers there is strength and two or more are able to accomplish crimes that are more difficult and harmful to the community. Because of this a conspiracy to commit a crime is a distinct crime in and of itself, separate and apart from the crime which it is the object of this conspiracy to accomplish. Thus a conspiracy may be found to exist although the purpose of the conspiracy is never accomplished.

The period of time charged in the indictment runs from in or about May, 1972 until on or about September 29, 1972. It is not necessary for the Government to prove that the conspiracy alleged started and ended on those specific dates although in this case the conspiracy of necessity terminated with the death of LaPolla on September 29, 1972. It is sufficient if you find that a conspiracy was formed and that it existed for some substantial time within the period set forth in the indictment.

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You will recall that the second element which the Government is required to prove beyond a reasonable doubt is that the conspiracy was directed at the free exercise or enjoyment by LaPolla of a right or privilege secured by the Constitution or laws of the United States. The right and privilege to give information to the proper authorities concerning violations of the federal gun control laws and the right and privilege to be a witness in a federal judicial proceeding are rights and privileges protected by the Constitution and the laws of the United States. Therefore, if you find that any defendant agreed or conspired with another with a specific intent to silence LaPolla by killing, beating, assaulting, threatening, bribing, intimidating or otherwise abusing him because he had given information to the proper authorities concerning violations of the federal gun control laws, had appeared before a Grand Jury or to prevent him from testifying in the pending criminal case against the defendants in a federal court here in Connecticut, then the conspiracy was directed at the free exercise and enjoyment of a right secured to LaPolla by the Constitution or laws of the United States, and the second element

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is satisfied.

You will recall that the third element which the Government is required to prove beyond a reasonable doubt is that a defendant joined the conspiracy with knowledge of its unlawful purpose. Now, when I say "joined the conspiracy", I do not mean that he had to file some kind of a written application for membership or say in so many words "Count me in." But before one can be found to be a conspirator he must know of the existence of the conspiracy and of its purpose and voluntarily and knowingly join with others in a common plan with an intent to promote its purpose. Here the defendant whom you are considering must intend to join with others in a common plan to deprive LaPolla of his right and privilege to give information to the authorities about violations of the gun control laws or to harm him because he had testified before a Grand Jury or to silence him from testifying in the approaching trial of the M-16 case. If, for example, a defendant joined a conspiracy to threaten, harm or kill LaPolla to settle a personal grudge, that would not satisfy this element of the offense. However, you need not find that a defendant was thinking in Constitutional terms or

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rights or even knew that the right he was denying LaPolla was a right protected by the Constitution or laws of the United States or even that his conduct violated the law. The unlawful intent is established if you find beyond a reasonable doubt that the defendant whom you are considering understood that the common purpose of the conspiracy was to intimidate, threaten, harm or kill LaPolla because he had given information to the authorities or to prevent him from becoming a witness in a federal prosecution. The mere fact, however, that a defendant may know of the existence of a conspiracy or be present when others were talking about it or have a relationship or an employment or an association or business relationship with another member of the conspiracy is not in itself enough to make him a conspirator unless you first find that he knew of the existence of the conspiracy and of its purpose and voluntarily and knowingly joined with others in a common plan with an intent to promote its unlawful purpose.

You will note that the indictment charges that the defendants unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together. The term "unlawfully" simply means that

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a defendant's conduct violates the law. It does not mean that he must know that his conduct violates the law. The term "knowingly" does not mean that a defendant must be aware that his conduct is criminal or that it viol[illegible] the law or anyone's constitutional rights. Knowingly simply means that the defendant must have known what he was doing, that he was acting freely and voluntarily, deliberately or on purpose and not because of some mistake, accident, carelessness or other innocent reasons. The term "wilfully" means that the defendant acted voluntarily as a result of the exercise of his own free will, that he acted knowingly, intentionally and on purpose. Here it means that he acted with a specific intent to threaten, harm or kill LaPolla because he had given information to the authorities or had appeared before a Grand Jury or to silence LaPolla from testifying in the M-16 gun case.

The key to this element of the crime, that is, membership in the conspiracy, is a defendant's guilty knowledge and intent. In determining the guilt of a defendant it is, obviously, impossible to look into his mind. However, intent and knowledge may be inferred from

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the way a defendant acts and by what he says in the context of all the surrounding circumstances. Thus, the adage "actions speak louder than words" also applies here.

In determining intent, therefore, you should consider all the evidence which you recall and believe as to what a defendant said, what he did or failed to do, and the way he acted or failed to act in the context of all of the surrounding circumstances. You should also consider the timing and sequence of his statements and acts in relation to the timing and sequence of the acts of others and to the events in the M-16 case. In short, consider how he conducted himself? Were his actions open, above board and innocent or were they secret, furtive and devious? Does his conduct as shown by the evidence reveal a consciousness of guilt or does it speak of an innocent state of mind?

You should also consider his knowing participation in any of the acts or circumstances which you believe show the existence of a conspiracy.

The key question on this element is whether the defendant was consciously working with others to harm or kill LaPolla because he was giving information to the proper authorities

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concerning violations of the gun control laws or because he appeared before a Grand Jury or to prevent him from testifying against the defendants in the M-16 gun case. One can become a member of a conspiracy without knowledge of all of the details or all of the operations of the conspiracy. One defendant may know only one other member of the conspiracy, yet if he knowingly cooperates with any other person to further the illegal purposes of the conspiracy with knowledge that others have combined to violate the law, he becomes a member although his role may be only an insignificant or subordinate one.

If you find that a defendant did join the conspiracy with knowledge of its illegal purposes, then he is bound by what other members say and do afterward within the scope and purposes of the conspiracy as the defendant understands its purpose and scope even though he is not present provided he has not withdrawn from the conspiracy. Each conspirator is the agent or partner of every other conspirator. What one does to promote the illegal plan or the illegal agreement binds every other member of the conspiracy.

You will note that I have said that every

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member of a conspiracy is bound by the acts of any other member of the conspiracy provided those acts are within the scope and in furtherance of the purposes of the conspiracy as the defendant whom you are considering understands them. In short, a defendant does not as Mr. Coffey, unfortunately, and erroneously suggested, take his chances that any conspirator is going to change the terms of the conspiratorial agreement nor is he bound by the act of any co-conspirator who goes outside the scope of the conspiracy and does something not in furtherance of the common purpose. In deciding whether a defendant joined a conspiracy, you must base your decision not on what others may have said or done, but only on what the defendant himself said or did. In other words, on the question of membership in a conspiracy, you can only consider a defendant's own actions, his own conduct and his own statements.

Now, of course, the defendants contend that the conspiracy was never formed, but further contend that even if you find that it was formed, the conspiracy terminated shortly after May 8th when according to Marrapese it was decided to try to bribe or beat LaPolla to keep him from testifying.

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The Government contends that the conspiracy continued, that the plan to kill LaPolla was simply kept in reserve and that it culminated in the killing of LaPolla on September 29th.

Now, the law says that once a conspiracy is formed, it is presumed to continue unless it appears from affirmative evidence that the conspiracy has been brought to an end or terminated. Moreover, the participation of any one or more members of the conspiracy can terminate if he or they withdraw from the conspiracy. Termination of a conspiracy means it is completely brought to an end. A conspiracy does not terminate if its objective is merely delayed or deferred pending other developments. Withdrawal from a conspiracy occurs when a person makes a clean breast of the plan to law enforcement authorities or reaches an understanding that he will no longer participate with members of the conspiracy or gives notice reasonably calculated to reach other members of the conspiracy that he no longer is a participant. Merely doing nothing or mere cessation of activity in furtherance of the conspiracy, however, is not sufficient to show a withdrawal. While the Government has the burden of proof to establish each element of the crimes

charged beyond a reasonable doubt, the burden of proof is upon a defendant to establish termination of a conspiracy or his withdrawal from it.

In this case, the defendants contend that even if a conspiracy to kill LaPolla was formed, which they dispute, it ended when the gun was taken back from Housand and the claim is made that even if it continued some or all of the defendants withdrew from it on the theory that they understood it was ended. If you find that the conspiracy was formed, but ended sometime before LaPolla's death on September 29th, then any defendant whom you find became and remained a member of the conspiracy until the time it terminated can be found guilty of the lesser crime of conspiring to intimidate, but cannot be found guilty of the greater crime of conspiring to intimidate with death resulting. In other words, if the conspiracy ended sometime before the death of LaPolla, then all of the members at the time of the termination can be found guilty of the lesser crime of conspiracy to intimidate, but not of the greater crime of conspiracy resulting in death. Similarly, if you find that any defendant joined the conspiracy but withdrew from it prior to the death of LaPolla,

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then that defendant can be found guilty only of the lesser crime of conspiring to intimidate, but cannot be found guilty of the greater crime of conspiring to intimidate with death resulting.

Now, the Government contends that the conspiracy never terminated until the death of LaPolla and that no members of the conspiracy withdrew. The Government contends that at most a decision was reached to defer the killing to see if less drastic means of silencing LaPolla would suffice. The various contentions of the parties create factual disputes that you must resolve. Of course, a defendant who joins and remains a member of a continuing conspiracy to kill is responsible for the resulting death even though the technique of the killing has shifted from shooting to dynamiting, even though the person in the role of the assassin is changed and even though the defendant is not present, provided the killing was the result of an act of any other member of the conspiracy in furtherance of and within the scope of the purpose of the conspiracy as the defendant understood its scope and purpose. A conspiracy may continue with some members even if one or more withdraw and even though the members

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remaining are persons other than the defendants. In other words, the withdrawal of one member does not terminate a conspiracy so long as at least two members remain. It takes two to conspire.

You will recall that the fourth element which the Government is required to prove beyond a reasonable doubt is that the intended victim, LaPolla, was a citizen of the United States. In this case there is uncontradicted evidence that Daniel LaPolla, the alleged victim, was an American citizen. Therefore, there is no dispute as to this element and you are instructed that if you find the existence of the conspiracy, that conspiracy was directed against a citizen of the United States.

You will recall that the fifth element which the Government is required to prove beyond a reasonable doubt is that the conspiracy resulted in the death of LaPolla. There is no dispute in the evidence that LaPolla met his death on September 29, 1972. The question for you, therefore, is whether LaPolla's death resulted from the conspiracy charged in this indictment. Death results from a conspiracy if it is caused by an act of one or more of the conspirators in furtherance of the purposes of the conspiracy. Death, whether

accidental or intentional, does not result from the conspiracy if caused by LaPolla's own act unrelated to the conspiracy or its purposes provided the death was not induced or brought about by some act of a conspirator in furtherance of the purposes of the conspiracy. Likewise, death, whether accidental or intentional, does not result from the conspiracy if caused by the acts of any person not a member of the conspiracy or even if caused by a member of the conspiracy, but not in furtherance of the purposes of the conspiracy.

You must consider each defendant separately. If you find as to the defendant whom you are considering that the Government has failed to prove beyond a reasonable doubt all five of the elements of the crime of conspiracy resulting in death, then you must find that defendant not guilty in your answer to Question No. 1 on the verdict form.

On the other hand, if you find as to the defendant whom you are considering that the Government has proved beyond a reasonable doubt each of the five elements of the crime of conspiracy resulting in death, then you should find that defendant guilty in your answer to Question No. 1

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on the verdict form.

Now, if you find a defendant guilty of the greater crime of conspiracy resulting in death, you do not need to answer Question No. 2 as to that defendant on the verdict form. If, however, you do not find a defendant guilty of the greater crime of conspiracy resulting in death, then you must go on to consider whether that defendant is guilty of the lesser crime of conspiracy to intimidate and state your verdict as to him in answering Question No. 2 on the verdict form. Here on conspiracy to intimidate not resulting in death, since death resulting is no longer an element, you need only consider the first four elements of the crime as I have given them to you, and to help you there I will now repeat those first four elements.

One, the existence of the conspiracy charged in the indictment to injure, oppress, threaten or intimidate Daniel LaPolla; Two, that the conspiracy was directed at the free exercise or enjoyment by LaPolla of a right or privilege secured by the Constitution or laws of the United States; Three, that the defendant joined the conspiracy with knowledge of its unlawful purpose; Four, that the intended victim, LaPolla, was a

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citizen of the United States.

Now, if as to the defendant whom you are considering you find that the Government has failed to prove beyond a reasonable doubt all of the first four elements of the lesser crime of conspiracy to intimidate, you must find that defendant not guilty of the lesser crime of conspiracy to intimidate in your answer to Question No. 2 on the verdict form. On the other hand, if you find as to the defendant whom you are considering that the Government has proved beyond a reasonable doubt all four elements of the lesser crime, then you should find that defendant guilty of the lesser crime of conspiracy to intimidate in your answer to Question No. 2 on the verdict form.

Now, the form itself tells you just that. It tells you that if your verdict on Question 1 is guilty as to any defendant, do not answer Question No. 2 with respect to that defendant. That is all there is on the conspiracy charge.

All right. You may go out now to dinner and then come back and resume your deliberation. I suggest it is better not to discuss the case while you are having dinner in a public place.

(The jury resumed their deliberations at 9:30 a.m.)

(11:20 a.m.)

THE COURT: Good morning. I have a note from the jury. "We would like to hear Mr. Marrapese's testimony about the conversation on May 8, 1972 in the car on the way to the court." Then a question "Is the mere unreported knowledge of a conspiracy enough to make a person a co-conspirator? Thank you. Mr. Dina, Foreman."

I've spent some time with the Reporter. We have the relevant part of the testimony which we will now read.

MR. ZINNI: If Your Honor please, I have one request if I may. There are portions of the testimony to which I objected. May that be deleted, the objections?

THE COURT: Mr. Coffey.

MR. COFFEY: If it won't be too much trouble for the Stenographer, Your Honor. I know there were objections overruled.

MR. ZINNI: Yes. I am aware of that.

THE COURT: I think it is better not to read them if the Stenographer can do it because it just interrupts the continuity.

MR. COFFEY: That's fine with me.

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MR. ZINNI: I have a second request. How does the Court propose to answer the second part of the question?

THE COURT: You will have to listen to that. If you object to it, I will hear you then.

(The jury entered the courtroom at this time.)

THE COURT: All right. I have your note. The Reporter will now read the testimony that you want.

(The following was read by the Reporter.)

"Excerpts from direct examination by Mr. Coffey of William Marrapese:

Q Who went where when the meeting broke up?

A Well, Mr. Housand, Mr. Joost and Mr. Guillette left the premises first out through the front door. I finished my rollex card. Mr. Bucci was in a hurry to leave. Mr. Zinni was still vacuuming through all this.

Q So what did you proceed to do after you finished checking the card?

A I asked -- I told Mr. Zinni to let the vacuuming go, just leave the vacuum cleaner there. I let him and Mr. Bucci out the front door. I

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"BY MR. COFFEY:

Q Mr. Marrapese, going back to the car ride on May 8th in which you and Mr. Bucci and Mr. Zinni had a conversation and directing you specifically to your testimony concerning the remark by Mr. Zinni about Mr. Patriarcha, how long have you lived in the Providence, Rhode Island area?

A All of my -- most of my life.

Q At the time Mr. Zinni made his remark, did you know -- not what you thought -- did you know if Mr. Patriarcha had a reputation in the community with respect to any particular trade?

A Yes, sir. I did.

Q What was that reputation?

A Mr. Patriarcha was a known -- well, a suspected member of organized crime.

Q Were you aware of that reputation at the time Mr. Zinni made his remark to you?

A Yes, sir."

THE COURT: Your question: "Is the mere unreported knowledge of the conspiracy enough to make a person a co-conspirator?", is not quite clear to me. If you mean -- if you are referring

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to Zinni here, the mere fact that Marrapese may have told him what the others had agreed to and that, therefore, he knew that others had agreed to this conspiracy and formed a conspiracy, that in itself would not be enough to make him a co-conspirator. Before he can be found to be a member of the conspiracy, he must know that others have formed a conspiracy. In other words, he must know that two or more people have combined to commit a crime and then before you can find him a member, he must get in on that arrangement. He may do that by the wink of an eye. I don't know. That is for you to decide. Did he in some way show that he assented to this? Did he become a party to it? Did he join in on it? And did he do so with an intent to promote its unlawful purpose? That is the key element, and the only way you can decide that is by determining not only what he said, but the time in which it was said and in light of all the surrounding circumstances which Zinni knew at that time. There is no other way to do it and that's your decision. He must know of the existence. By that I don't mean that mere knowledge of it, he is under no duty to go report it to anybody. He doesn't have to go to the law

authorities and say "Hey, Marrapese and these others and Housand, if so, entered into a conspiracy to dump LaPolla." He doesn't have to do that, but if that is what you mean, before you can find that he was a member, you must find that he himself said or did something in the light of all the circumstances known to him to assent to become a member and join with the others in a common plan to silence LaPolla and, if necessary, to use death as one of the means of doing it.

All right. You may resume your deliberations.

(The jury resumed deliberations at 11:35 a.m.)

MR. JOOST: Your Honor, for the record, I object to what you just told the jury. I think you were just pointing out our guilt of Mr. Guillette and Joost.

THE COURT: I didn't even mention Joost or Guillette.

MR. JOOST: I know that. You didn't have to, Your Honor.

THE COURT: Purposely I didn't.

MR. SANTOS: Well, I would say this, Your Honor. I know the Court in no way suggested

and I know the Court was speaking about Zinni's role, but my only concern is that the jury might perceive it a little differently than the Court intended it with regard to whether, in fact, the conspiracy, in fact, was ever formed which, of course, takes them back to Marrapese's credibility. So for the record, I would just say that, Your Honor.

THE COURT: I note your objection.

MR. ZINNI: Your Honor, please, the language that I would have hoped that the Court would have adopted would have been the Falcone language which I think went a step further, more than mere assent. I think the Court should have respectfully instructed the jury or answered the jury that you must be satisfied that Zinni did some act to show that he adopted the venture as his own and promoted it in some fashion. I would have hoped that. I would ask that the Court send that back if it is at all possible in written form.

MR. COFFEY: I disagree and object to that, Your Honor. It's not the law as I understand it in this Circuit. If any one member of the conspiracy did an overt act in it, it binds all those who are members in that conspiracy.

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THE COURT: Mr. Coffey, you are not even with the problem. Get the jury back.

MR. COFFEY: Your Honor, I think that is what Mr. Zinni said.

THE COURT: Mr. Marshal, bring the jury back.

(The jury entered the courtroom at 11:37 a.m.)

THE COURT: I want to add a little more to this. As I told you, you must find that there is an assent by anyone in order to find that he has become a member. You must find that he assents to this. And as I told you in the main charge, he doesn't have to say in so many words "Count me in." And as I told you a moment ago, it may be just the wink of an eye. We all have little conspiracies in our lives. Husbands and wives have them, you have them with your children. You are going to buy your wife a present, your daughter knows about it and it's a little silent conspiracy you have and winks of an eye or a smile show that you have a common understanding. So here there must be an assent on his part to join in this, any act or anything he says of his

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own, not what someone else said or did, but what he himself says or does. He must in some way indicate or show that he is going along with this, that he is in on it, that he is part of this arrangement, that he adopts this plan as his own and that he is going to promote it, to promote it as his own and that he has a stake in its outcome. I think you should, therefore, consider all of this evidence. It isn't just this conversation. That is part of it. It's that conversation plus the entire context of circumstances known to those participants at that time. These words, like any other words, take on their meaning only in the context of the whole circumstances. Just as a word in a sentence means nothing unless you look at all the other words in the sentence or in the paragraph or sometimes in a whole book.

Now, that is what you will have to decide. If you want anything further on it, give me a note.

(The jury resumed their deliberations at 11:40 a.m.)

MR. SANTOS: Excuse me, Your Honor. I would take exception to those remarks, Your Honor.

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THE COURT: Your exception is noted.

MR. WADE: I join in that, Your Honor.

(Whereupon, court recessed at 11:41 a.m.)

(At 12:35 p.m. court reconvened and the jury entered the courtroom.)

THE COURT: All right. Mr. Clerk, all twelve jurors are present. Proceed.

THE CLERK: Mr. Foreman, would you, please, stand? Ladies and gentlemen of the jury, have you agreed upon a verdict?

THE FOREMAN: Yes. We have.

THE CLERK: Mr. Foreman, what is the verdict?

THE FOREMAN: As to Count One, Question 1, David Guillette, guilty; Robert Joost, guilty; Nicholas Zinni, not guilty.

As to Question 2 of Count One, Nicholas Zinni, not guilty.

As to Count Two, Question No. 3, David Guillette, guilty.

Count Three, Question No. 4, David Guillette, not guilty.

THE CLERK: Ladies and gentlemen of the jury, kindly listen to your verdict as received

by the Court. May I have that, please?

(The Foreman: Hands document to the Clerk.)

THE CLERK: In the case of United States of America versus David Guillette, Robert Joost and Nicholas Zinni, on Count One as to Question No. 1, David Guillette, guilty; Robert Joost, guilty; Nicholas Zinni, not guilty. As to Question No. 2, Nicholas Zinni, not guilty. As to Count Two, Question No. 3, David Guillette, guilty. As to Count Three, Question No. 4, David Guillette, not guilty.

Is this your verdict, ladies and gentlemen of the jury, and so say you all?

(The jury answered affirmatively.)

THE CLERK: Thank you.

THE COURT: I want to thank you for the very careful consideration which I know you gave to this case. I never comment on what I would have done if I were on a jury. As I told you during the trial and during my charge, the decision in the case was entirely up to you and I firmly believe in that principle, and I always try to keep an

FUNCTION OF COURT AND JURY

Ladies and gentlemen, you have heard the evidence presented in this case. You have heard the summations of the government attorneys and the lawyer for the defense. And now, in the orderly course of the trial, we come to what is known as the charge: that is, the instructions of law which it is my duty to give you.

It is exclusively the function of the Court to set forth the rules of law which govern the case, with instructions as to their application. On these legal matters you must take the law as I give it to you; you are not at liberty to do otherwise. [illegible]

On the other hand, you, members of the jury, are the sole and exclusive judges of the facts.

It is your duty to find the facts. You are to recollect and weigh the testimony and draw your own conclusions

as to what the ultimate facts are. But you may not go outside the evidence to find the facts, nor resort to guesswork, conjecture or suspicion.

I charge you that the government in this case must be considered in no different light than any other party to a law suit and counsel for the government must be considered in no different light than counsel for the defendant. The fact that the government is a party entitles it to no greater consideration or less consideration than that accorded to any other party to the litigation.

Therefore you are to apply the law, which I give you, to the facts as you find them, and, in this way, you will render your verdict.

REMARKS AND SUMMATION OF COUNSEL

I charge you that comments and remarks of counsel are not evidence, nor is the summation and argument of counsel for either side evidence. It is your recollection of the facts, produced from the witnesses on direct examination and cross-examination, that is to guide you in your deliberations.

(40)

OBJECTION OF COUNSEL

During the course of the trial each attorney, including the government attorney, has made objection to the introduction of evidence which he felt should not be admitted into the case. The making of an objection by counsel representing a party should in no way be taken by you against the party.

(5)

STRICKEN TESTIMONY

Now, if in any instance in the course of the trial an objection was made to the testimony of any witness and the Court sustained the objection and ordered the objectionable testimony stricken, you are to disregard entirely such stricken testimony. Such rulings of the Court during the trial are not to be taken as indicating the Court's belief, one way or another, in the guilt or innocence of the defendant nor of the truth, falsity or weight of the testimony involved.

If at any time, from the moment you took the oath of jurors and during the course of this trial, the Court instructed you to disregard a certain matter, you are to wipe that matter completely from your mind and totally disregard it in your deliberations.

Q's BY COURT

(6)

DIRECT AND CIRCUMSTANTIAL EVIDENCE

Now there are two general types of evidence which you may consider. One is direct evidence - such as the testimony of eye-witnesses. The other is circumstantial evidence - the proof of a chain of circumstances from which some other fact may be inferred.

Circumstantial evidence may be received and is entitled to such consideration as you may find it deserves depending upon the inferences you think it necessary and reasonable to draw from such evidence. No greater degree of certainty is required when the evidence is circumstantial than when it is direct, for in either case you must be convinced beyond a reasonable doubt of the guilt of the defendant. Circumstantial evidence consists of facts proved from which the jury may infer by a process of reasoning other facts sought to be established as true.

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Different inferences, however, may be drawn from the facts and circumstances in a case, whether proved by direct or circumstantial evidence. The prosecution asks you to draw one set of inferences while the defendant asks you to draw another. It is for you and for you alone to decide, which common sense inferences you will draw from the proven facts. If all the circumstances taken together are consistent with any reasonable hypothesis which includes the innocence of the defendant, the government has not proved his guilt beyond a reasonable doubt, and you must acquit him. On the other hand, if you find that all of the circumstances established by the evidence in this case, taken together, satisfy you beyond a reasonable doubt of the guilt of the defendant, in accordance with these instructions, it is your duty to find him guilty.

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(5)

PRESUMPTION OF INNOCENCE

In this case, ladies and gentlemen, as in al.. criminal prosecutions, ~~the~~ EACH defendant is presumed to be innocent VALUE AND until proven guilty beyond a reasonable doubt. This presumption of innocence was with ~~this~~ THESE defendant S THEY WAS when ~~he was~~ first presented for trial in this case. It continues with ~~him~~ THEM throughout this trial. As far as you are concerned ~~he~~ EACH is innocent, and he continues innocent unless and until such time as all the evidence produced here in the trial considered in the light of these instructions of law, and deliberated upon by you, satisfies you beyond a reasonable doubt that ~~he~~ A A VALUE YOU ARE CONSIDERING is guilty.

(9)

BURDEN OF PROOF

The burden of proving ~~the~~ a defendant guilty of the crimes with which he is charged is upon the government. ~~The~~ A defendant does not have to prove his innocence. This means that before you may find ~~the~~ a defendant guilty of any count, the government must prove to you beyond a reasonable doubt each and every element necessary to constitute the crime charged. Whether that burden of proof resting upon the government is sustained, depends not on the number of witnesses, nor on the quantity of the testimony, but on the nature and quality of the testimony.

(P)

REASONABLE DOUBT

Now, a reasonable doubt means a doubt founded upon reason. As the words imply, it is a doubt as will be entertained by a reasonable man after all the evidence in the case is carefully analyzed, compared and weighed. A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the government to prove ~~the~~ a defendant guilty beyond a reasonable doubt of every essential element of each crime charged, a defendant has the right to rely upon a failure of the prosecution to establish such proof. However, absolute or mathematical certainty is not required, but there must be such certainty as satisfies your reason and judgment, and such that you feel conscientiously bound to act upon it. It is not a fanciful doubt, or a whimsical or capricious doubt, for anything relating to human affairs and depending upon

(11)

human testimony is open to some possible or imaginary doubt.

A reasonable doubt is such doubt as would cause a prudent person to hesitate before acting in matters of importance to himself.

In other words, if the evidence warrants, in your judgment, the conclusion that a defendant is guilty so as to exclude every other reasonable conclusion, you should declare him to be guilty. On the other hand, if on all the evidence, you have a reasonable doubt as to the guilt of a defendant, you must find him not guilty.

SEPARATE CASES

One final preliminary but vitally important point. As I said to you at the outset of this case, you are considering four separate cases, one against each of the four defendants. The four cases are tried together simply as a matter of convenience. But in determining the innocence or guilt of each defendant, you must give individual consideration to his case. Now most of the evidence before you is available for your consideration in each of the four cases against each of the defendants. But you will recall that some exhibits were introduced only in the Guillette and Joost cases and not in the Zinni and Bucci cases. Also you will recall that the statement Marrapese said Guillette made in Armando's Restaurant in March '73 in which Guillette is alleged to have admitted placing the explosive device was introduced and is to be considered only in the Guillette case, and a statement Marrapese said Zinni made

long after 1972 concerning Zinni's knowledge of what was going on was introduced and is to be considered only in the Zinni case. The point I emphasize now is that even though most of the evidence is available for your consideration against all defendants, you must give separate consideration to the guilt or innocence of each defendant, just as if he were being tried alone. Your verdicts as to any one defendant must not influence your verdicts with respect to any other defendant. ~~And a~~ ~~verdict of guilty on any one count, if you so find, should not influence your verdict on any other count, except to the extent permitted under these instructions.~~

innocence of each defendant on the particular charges brought against him.

Let me also point out the function of an indictment. An indictment by a grand jury is the formal method of accusing a defendant of certain crimes. It merely defines the crimes charged and the manner of their alleged accomplishment. The indictment is without bearing or significance in your consideration of this case and it is to be accorded no weight by you in determining the guilt or innocence of the defendant. By his plea of Not Guilty, each defendant has denied each and every allegation set forth in the indictment.

SUMMARY OF CHARGES

Now let me turn to the specific allegations in these cases. Each count alleges a violation of federal law. As you know, the Government alleges that a killing has occurred and you may wonder why there is no count of murder. Well, murder is generally an offense against the laws of a state. It sometimes happens, however, that a killing, if it occurs, can violate a federal law, that is, one passed by Congress. Count 1 charges an offense in which a killing is a federal crime. This is so because, according to the allegation, the person killed was denied his civil rights, specifically his right to give information concerning federal law violations and his right to testify in a federal prosecution. I'll discuss the pertinent statute and the elements of the offense in a moment, but let me briefly indicate the gist of all three counts so you will understand the overall allegations. Count 1 charges a conspiracy

INDICTMENT

Now, as you know, this case involves criminal charges brought by the Government against four defendants, David Guillette, Robert Joost, Nicholas Zinni, and Andrew Bucci. The charges are set forth in two indictments. The three charges against Guillette, Joost, and Zinni are in an indictment with the number H-524, and the one charge against defendant Bucci is in an indictment with the number H-75-39. I will discuss these allegations in detail in a moment. Let me first point out that you are to attach no significance whatever to the fact that there are two separate indictments, nor to the fact that three charges are brought against three of the defendants and one charge is brought against one of the defendants. Nor should you speculate on why the number of charges varies among defendants. Specifically, you must not permit the number of charges to have any bearing whatever on your consideration of the guilt or

to intimidate Daniel LaPolla in the exercise of his constitutional rights, and it further alleges that the conspiracy resulted in LaPolla's death. All defendants are charged in Count 1. Count 2 charges defendants Guillette, Joost, and Zinni with the substantive offense of intimidating LaPolla by force and violence on September 29, the day he died. Count 3 charges defendants Guillette, Joost, and Zinni with the substantive offense of using an explosive to commit the crime charged in Count 2.

SECTION 241 VIOLATION

Count 1 charges a violation of Section 241 of the criminal code. The statute reads as follows: "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured by him by the Constitution or laws of the United States" each shall be punished, and the statute further provides that "if death results," they shall be subject to a greater punishment. I should point out that in the event of a conviction on this or any other count, the matter of punishment is solely a question for the Court and not for the jury's consideration at all. Your task is to determine whether or not the crimes charged in each count have been proved beyond a reasonable doubt.

Count 1, in the indictment against Guillette, Joost, and Zinni reads as follows:

"From on or about May , 1972 until on or about September 29, 1972 in the District of Connecticut, and elsewhere, DAVID GUILLETTE, ROBERT JOOST, WILLIAM MARRAPESE, and NICHOLAS ZINNI, the defendants herein, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to injure, oppress, threaten and intimidate one Daniel Lapolla, a citizen of the United States of America, in the free exercise and enjoyment of a right and privilege secured to him by the Constitution and laws of the United States and because of him having exercised said right and privilege, to wit, the right and privilege to give information to the proper authorities concerning violations of the gun control laws of the United States, and the right and privilege to be a witness in a judicial proceeding in the United States District Court for the District of Connecticut, to wit, the case of United States v. William Marrapese, Nicholas Zinni, Robert Joost and David Guillette, Criminal No. H-264; and it is further alleged that this combination and conspiracy resulted in the death of Daniel Lapolla.

All in violation of Section 241, Title 18, United States Code."

Count 1, in the indictment against Bucci, uses almost identical language with three exceptions: the starting date of the conspiracy is alleged to be May 4, 1972, instead of just May, 1972; John Housand's name is added to the members of the alleged conspiracy; and, in what appears to be a typographical area, one line from the language of the indictment in H-524 has been omitted from the Bucci indictment. While that omission makes for a slightly awkward reading, the elements of the offense charged in Count 1 are the same for all defendants.

There are seven elements of the crime charged in Count 1, each of which the Government must prove beyond a reasonable doubt before there can be a conviction on that count. Let me first list them and then discuss them in some detail. First, that there existed the conspiracy charged in the indictment; second, that it was the purpose of the conspiracy to injure, oppress, threaten or intimidate Daniel LaPolla; third,

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that the intended victim, Danial LaPolla, was a citizen of the United States, fourth, that the conspiracy was directed at the free exercise or enjoyment by LaPolla of a right or privilege secured by the Constitution or laws of the United States, fifth, that the defendant whose case you are considering wilfully became a member of the conspiracy, sixth, that such defendant became a member with the specific intent of interfering with LaPolla's federally protected rights, and seventh, that the death of Danial LaPolla resulted from the conspiracy.

With respect to Count 1, there are three possible verdicts as to each defendant: not guilty, guilty of conspiring to intimidate, or guilty of conspiring to intimidate with death resulting. If you find with respect to any defendant that only the first six elements have been proved beyond a reasonable doubt, you should find that defendant guilty of conspiring to intimidate. If you find with respect to any defendant that all

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seven elements have been proved beyond a reasonable doubt, including the last element that the death of LaPolla resulted from the conspiracy, then you should convict that defendant of conspiring to intimidate with death resulting. If you find with respect to any defendant that any one of the first six elements has not been proved beyond a reasonable doubt, then you must find that defendant not guilty of Count 1.

Now let me turn to each element in some detail. The first element concerns the existence of the conspiracy charged in the indictment. A conspiracy is an agreement between two or more persons to accomplish some criminal or unlawful purpose. It is sometimes referred to as a partnership in crime. The agreement is the essence of the conspiracy. The agreement is established if you find that two or more persons, in any manner, through any contrivance, impliedly or tacitly came to a common understanding to violate the law. Neither express language nor

any particular words are needed to indicate that such an agreement was formed.

To establish the existence of a conspiracy, the Government is not required to show that two or more persons entered a solemn compact in writing stating that they have formed a conspiracy and detailing its objectives. Indeed, it would be surprising if there were such a formal agreement. Your common sense will tell you that when people join together in forming a criminal conspiracy, much is left to their unexpressed understanding. From its very nature a conspiracy is usually secret in its origin and execution.

In determining whether there has been an unlawful agreement, you may consider the acts and conduct of the defendant and of the alleged co-conspirators that are done to carry out an apparent criminal purpose. The adage "action speaks louder than words" is often applicable. Sometimes the only available

evidence is a series of disconnected acts, which, when taken together, show the existence of a conspiracy.

The second element concerns the purpose of the conspiracy. Was it to injure, oppress, threaten or intimidate Daniel LaPolla? The words injure, oppress, threaten, or intimidate are not used in any technical sense but may cover a variety of conduct intended to frighten or harm a person. They do not include conferring a benefit such as a bribe. If you find, as the Government contends, that the purpose of the conspiracy was to kill LaPolla, that is oppression or intimidation within the meaning of Count 1.

The third element is that the intended victim was a citizen of the United States. You may recall there is in evidence LaPolla's birth certificate showing that he was born in the United States. Every person born in the United States is a citizen of the United States.

The fourth element concerns a further refinement of the purpose of the conspiracy: was it directed at the free exercise or enjoyment by LaPolla of a right or privilege secured by the Constitution or laws of the United States? The Government contends that the objective of the conspiracy was to injure or intimidate LaPolla because he had exercised his federally protected right to give information to the proper authorities concerning violations of federal law, and also to prevent LaPolla from exercising his federally protected right to appear as a witness in a federal prosecution. I instruct you that both the right to give information to proper authorities concerning federal violations and the right to be a witness in a federal prosecution are rights protected by the Constitution and laws of the United States. The Government has offered evidence to show that the alleged conspirators knew LaPolla was giving information to federal authorities concerning a

violation of the federal laws concerning interstate shipment of stolen guns and that LaPolla was going to be a witness in a federal prosecution concerning such federal gun law violations. If you find beyond a reasonable doubt that the objective of the conspiracy was to intimidate or injure LaPolla either because he had given information of federal law violations or because he was going to be a witness in a federal prosecution, you may find that the fourth element has been established.

The fifth element is whether the defendant whose case you are considering wilfully became a member of the conspiracy. To find that a defendant became a member of the conspiracy, you must be persuaded beyond a reasonable doubt that by his words or his conduct or both he clearly indicated his decision to join the conspiracy with the intention of advancing its objectives, and that he wilfully participated in the plan and in some sense promoted the venture himself, or made it his own, or indicated

that he had a stake in the venture. On this point, it is important to bear in mind that a defendant's joining of the conspiracy cannot be shown by his mere presence with other members of the conspiracy even if he has knowledge that there is a conspiracy being formed or existing. Guilt by association is foreign to our law, and being present with criminals, even if one knows of their criminal activity, does not make a person a participant in a criminal enterprise. One may join a conspiracy without being assigned any particular role in the conspiracy. And a defendant can be found to have joined a conspiracy even if he does not know all the members of the conspiracy and does not know all the details of the conspiracy. But there must be proof beyond a reasonable doubt that he knows the objectives of the conspiracy and makes clear his intention to join the conspiracy in order to promote those objectives. A defendant may be found to have joined a conspiracy after it has initially

been formed, and if he does join, he is as responsible for the conspiracy and for all acts taken in furtherance of it as those who joined in the beginning. However, a defendant is not liable for any action taken by a co-conspirator beyond the scope of the conspiracy he understands he is joining.

As I mentioned, the act of joining the conspiracy must be done wilfully. An act is done wilfully if it is done voluntarily and intentionally, with a specific intent to do something that the law forbids, that is, with a bad purpose either to disobey or disregard the law.

In deciding whether there is proof beyond a reasonable doubt that a defendant whose case you are considering knowingly became a member of the conspiracy, you may consider only the statements and actions of that defendant. You look only at what he said and what he did in deciding whether he joined the conspiracy. Of course, in deciding whether a defendant's words or actions demonstrate a joining of the conspiracy, you are

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In considering whether a person joined a conspiracy, you do not rely on what someone else thought he meant by what he said. This is a decision for you to make. You first have to decide whether you believe that a person did say certain things or did take certain actions. If you find that he did, you then have to decide whether in your judgment the words spoken or actions taken prove beyond a reasonable doubt that he joined a conspiracy.

entitled to consider the circumstances then existing that are known to the defendant at the time he makes the statements or does the acts that you find are established. In other words, his words or acts are to be considered in context, not in the abstract.

If you find that a defendant did join the conspiracy, then you can find that he is liable for all of the statements and actions of other members of the conspiracy that are made or taken in furtherance of the objectives of the conspiracy. And he is liable even if these statements were made or these actions were taken in his absence.

While each element of the offense charged in Count 1 must be proved beyond a reasonable doubt as to the defendant whose case you are considering, I urge you to give careful consideration to whether or not this element of wilfully joining the conspiracy has been established. If a defendant

made an equivocal remark which the Government contends indicates his assent to the conspiracy, such as, for example, the remark Marrapese says Zinni made concerning John Housand, consider carefully whether or not you are persuaded beyond a reasonable doubt that the defendant did by that remark clearly indicate his intention to join the conspiracy. If a defendant took certain actions which the Government contends indicate his assent to the conspiracy, consider carefully whether or not you are persuaded beyond a reasonable doubt that by those actions the defendant clearly indicated his intention to join the conspiracy. Even though you may be somewhat suspicious as to why the defendant made a remark or took certain actions, if you have a reasonable doubt that his remark or actions indicate an intention to join the conspiracy, you must acquit him.

The sixth element is whether a defendant, in becoming a member of the conspiracy, did so with the specific intent to interfering with or denying LaPolla his federally protected

rights. If, for example, a defendant joined a conspiracy to kill LaPolla to settle a personal grudge, that would not satisfy this element of the offense. However, you need not find that a defendant, in joining the conspiracy, was thinking in constitutional terms or even knew that the right he was denying LaPolla was a right protected by the Constitution or laws of the United States. The requisite specific intent is established if you find beyond a reasonable doubt that a defendant joined the conspiracy with the specific intent of intimidating LaPolla because he had given information to the authorities of a federal law violation or to prevent him from becoming a witness in a federal prosecution.

If all of these six elements are proved beyond a reasonable doubt as to any one defendant, then you should find him guilty of conspiring to intimidate. If, in addition, you find the seventh element established beyond a reasonable doubt, namely - that the death of LaPolla resulted from the conspiracy, then you should find the defendant guilty of conspiring to

intimidate with death resulting. A death results from a conspiracy if it is caused by one or more of the conspirators in taking some action in furtherance of the objectives of the conspiracy.

Now, having explained the elements of the crime charged in Count 1, let me narrow the issues for you somewhat by relating the claims made by the various parties to the elements themselves. Obviously there is a fundamental dispute between the Government and all of the defendants as to whether a conspiracy to intimidate LaPolla was ever formed. The Government alleges that the conspiracy was formed at a meeting in Carter's jewelry store on May 8, 1972. The defendants dispute that such a meeting ever occurred. I specifically instruct you that you cannot find that the conspiracy charged in Count 1 was formed unless you find beyond a reasonable doubt that there was a meeting on May 8 in Carter's jewelry store, at which an agreement was made to kill Daniel LaPolla. If you do

not find beyond a reasonable doubt that such a meeting occurred, you must acquit all defendants of the crime charged in Count 1. In determining whether or not such a meeting occurred, you are entitled to consider all of the evidence in the case, except for evidence that I have specifically told you is to be considered only against a particular defendant. In deciding whether the meeting occurred, you are not limited to the testimony concerning May 8. You can consider evidence introduced by any party ~~both sides~~ concerning events before and after May 8. If you find that the meeting did occur and that an agreement to kill LaPolla was reached, then you may return a verdict of guilty on Count 1 as to any defendant as to whom you find all of the elements of Count 1 have been established beyond a reasonable doubt.

Now there is another matter in dispute between the parties, and this matter has an important bearing on what has been referred to as the "death resulting" issue. I have

previously explained to you that in considering Count 1, there are three different verdicts you can return as to each defendant, and I again emphasize that you must consider your verdicts as to each defendant separately. The three verdicts are: not guilty, guilty of conspiring to intimidate, and guilty of conspiring to intimidate with death resulting. The issue I am now focusing on concerns the parties' claims as to whether the conspiracy ended as to some or all of the defendants. You will recall that there was testimony as to what Marrapese and Bucci and perhaps others said shortly after the May 8 meeting, and there was testimony concerning taking a gun back from John Housand. Now of course the defendants contend that the conspiracy was never formed in the first place. But, if you find beyond a reasonable doubt that it was formed, then you encounter a further contention of the defendants, based entirely on the testimony from the witness Marrapese, that the conspiracy

LaPolla's death was accidental. It is entirely proper for a

terminated. The Government contends that it continued and culminated in the killing of LaPolla on September 29.

Let me first explain the legal principles concerning this issue and then relate the parties' claims to these principles. Once a conspiracy is formed, there is a presumption that it continues in existence unless it appears that the conspiracy has been brought to an end or terminated. Moreover, the participation of any one or more members of the conspiracy can terminate if he or they withdraw from the conspiracy. Termination of a conspiracy means it is completely brought to an end. A conspiracy does not terminate if its objective is merely delayed or deferred pending other developments. Withdrawal from a conspiracy occurs when a person makes a clean breast of the plan to law enforcement authorities or reaches an understanding with members of the conspiracy or gives notice reasonably calculated to reach other members of the conspiracy

that he is no longer a participant. Mere cessation of activity in furtherance of the conspiracy is not sufficient to show a withdrawal. While the Government has the burden of proof to establish each element of the crimes charged, the burden of proof is upon ~~the~~ a defendants to establish termination of a conspiracy or his withdrawal from it.

In this case, the defendants contend that even if a conspiracy to kill LaPolla was formed, which they dispute, it ended when the gun was taken back from Housand. And the claim is made that even if it continued, some or all of the defendants withdrew from it on the theory that they understood it was ended. If you find that the conspiracy was formed, but ended before LaPolla's death on September 29, then any defendant whom you find to have become a member of the conspiracy can be found guilty of conspiring to intimidate with death resulting. In other words, if the conspiracy ended before the death, then the

members can be found guilty of the conspiracy itself, if they joined it, but not of a death resulting from a conspiracy. Since the essence of the crime of conspiracy is the criminal agreement, a person who joins such an agreement can be guilty of conspiracy whether or not the objective of the conspiracy is carried out while he is still a member. Similarly, if you find that any defendant joined the conspiracy but withdrew from it prior to the death of LaPolla, then that defendant can be found guilty only of conspiring to intimidate and cannot be found guilty of conspiring to intimidate with death resulting. The Government, on the other hand, contends that the conspiracy never terminated until the death of LaPolla and that no members of the conspiracy withdrew. The Government contends that at most a decision was reached to postpone the killing to see if less drastic forms of persuasion would suffice. The various contentions of the parties create factual disputes that you

must resolve. Of course, a person who joins a conspiracy to kill that continues until the death results remains liable for the resulting death even though the technique of killing has shifted from shooting to dynamiting. One other point on this subject -- if a conspiracy is formed, it may continue with some members still a part of it even if one or more other members are no longer participants. The withdrawal of one member does not terminate a conspiracy, unless there are only two members, since a person cannot conspire with himself. So, as I have said, you have to make individual judgments as to whether each defendant ever became a member of the conspiracy and if he did, whether he is liable only for conspiring to intimidate or is also liable for conspiring to intimidate with death resulting if the conspiracy remained in existence until LaPolla's death and if the defendant whom you are considering remained a member of the conspiracy until LaPolla's death.

From on or about May , 1972 until on or about

SECTION 1503 VIOLATION

Thus far I have been explaining only the elements of Count One. Let me now turn to Count Two, which, as I have mentioned, is charged only against defendants Guillette, Joost, and Zinni. Count Two charges an obstruction of justice in violation of Section 1503 of the Criminal Code. That statute provides as follows: "Whoever . . . by threats or force . . . endeavors to influence, intimidate, or impede any witness, in any court of the United States . . . or injures any witness in his person or property on account of his attending . . . such court" shall be punished.

Count Two, charging a violation of this statute, reads as follows:

"On or about September 29, 1972, in the District of Connecticut, David Guillette, Robert Joost, Nicholas Zinni and William Marrapese unlawfully, wilfully and knowingly endeavored, by force and violence, to

influence, intimidate and impede Daniel Lapolla, a witness in a Court of the United States, a witness in the matter of the United States v. William Marrapese, Nicholas Zinni, David Guillette and Robert Joost, Criminal No. H-264, which was before the United States District Court for the District of Connecticut.

All in violation of Title 18, United States Code, Section 1503."

There are three elements of the offense charged in Count Two, each of which the Government must prove beyond a reasonable doubt. First, that a defendant knew that a proceeding was pending in a court of the United States. In this case the Government contends that the defendants charged in Count Two knew that criminal charges were pending against them in Indictment Number H-264, the case that has been referred to as the M-16 case. The second element is that a defendant knew that Daniel LaPolla was expected to be called as a witness in the M-16 case. Third, that a defendant on or about September 29, 1972, unlawfully, wilfully and knowingly

endeavored by force and violence to influence, intimidate or impede LaPolla in order to prevent him from being a witness in the M-16 case. Count Two is not a conspiracy count. It charges the substantive offense of an actual obstruction of justice on September 29.

Again, in considering the guilt or innocence of each of the three defendants charged in Count Two, you must consider their cases separately in determining whether each of the elements of Count Two has been established beyond a reasonable doubt.

Now in considering the innocence or guilt of each defendant charged in Count Two, there are two special rules that may apply and they are very similar to each other. The first concerns a joint venture. If you find beyond a reasonable doubt that the defendant whose case you are considering was knowingly and wilfully engaged in a joint venture with others

seven elements have been proved beyond a reasonable doubt,

to accomplish the killing of Daniel LaPolla in order to prevent him from being a witness in the M-16 case, then you may find that defendant guilty of Count Two if another participant in that joint venture took some action to endeavor to intimidate LaPolla by force and violence on September 29, whether or not the defendant whose case you are considering personally took such action. But before you can find that a defendant was engaged in such a joint venture, you must find beyond a reasonable doubt that he in some way aided, abetted, or promoted the joint venture or joined it as something he wished to make his own. Again, as with conspiracy, mere association with participants in a joint venture, even with knowledge of their criminal purpose, is not sufficient to find participation in a joint venture. There must be an indication beyond a reasonable doubt that the defendant intended to join the joint venture and did join it, and remained a part of it on September 29.

any particular words are needed to indicate that such an agreement

The second rule is very similar to the joint venture rule. If you find that a defendant whose case you are considering was a member of the conspiracy charged in Count One, that is, that all of the elements of Count One, as I have explained them, have been established as to that defendant beyond a reasonable doubt, and if you find that on September 29 the offense charged in Count Two was carried out by a member of that conspiracy in furtherance of the objectives of the conspiracy, then you may find that such a defendant is guilty of the substantive offense charged in Count Two, whether or not he personally took any action on September 29. Of course he can be found liable on this theory only if he continues to be a member of the conspiracy on September 29.

You cannot apply either of the rules -- the joint venture rule or the rule concerning an offense being carried out in furtherance of the objectives of a conspiracy -- unless you first find beyond a reasonable doubt that the [illegible] occurred at Canal Zone County [illegible]. If you are not persuaded that that offense occurred, then guilt on Counts Two [illegible] can be found only on the basis of [illegible]

evidence is a series of disconnected acts, which, when taken

A document missing as of on
Sept 29.

The fourth element concerns a further refinement of

SECTION 844 VIOLATION

Now let me turn to Count Three. Count Three charges the use of an explosive to commit a felony in violation of Section 844 of the criminal code. That statute provides as follows: "Whoever uses an explosive to commit any felony which may be prosecuted in a court of the United States" shall be punished. Count Three, which charges a violation of this statute by defendants Guillette, Joost, and Zinni, reads as follows:

> "On or about September 29, 1972, in Oneco, Connecticut in the District of Connecticut, David Guillette, Robert Joost, William Marrapese and Nicholas Zinni did wilfully, unlawfully and knowingly use an explosive, that is, a dynamite bomb, to commit a felony prosecutable in a court of the United States, said felony being the influencing and injuring by force a witness in a Court of the United States, i.e. one Daniel Lapolla and the influencing and injuring of said Daniel Lapolla for having so testified in a proceeding of

the United States, thus impeding, obstructing and influencing the due administration of justice, in violation of Section 1503, Title 18, United States Code.

All in violation of Title 18, United States Code, Section 844 (h)(1)."

There are two elements of the crime charged in Count Three, each of which the Government must prove beyond a reasonable doubt. First, that a defendant did commit the felony charged in Count Two of the indictment, that is, obstructing justice by injuring by force a witness in a court of the United States. If a defendant is not guilty of Count Two, obviously he cannot be found guilty of Count Three. The second element of Count Three is that a defendant, in committing the felony charged in Count Two, did on September 29, 1972, use an explosive, that is, a dynamite bomb. The term explosive includes any explosive bomb and includes an explosive device containing dynamite. I should point out, that as with

that he had a stake in the venture. On this point, it is

Count Two, it is not necessary that a defendant whose case you are considering has personally used an explosive in committing the felony charged in Count Two. If a defendant on September 29 was engaged in a joint venture with others to accomplish the killing of LaPolla to prevent him from being a witness in the M-16 case, or if on that date he was a member of the conspiracy charged in Count One, then you may find that defendant guilty of Count Three if another member of that joint venture or that conspiracy used an explosive to commit the felony charged in Count Two. The same standards I have mentioned concerning joining a joint venture or joining a conspiracy, in regard to Counts One and Two, apply with equal force to Count Three

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DEFENSE OF ACCIDENT

In discussing the charges in the three counts, I mentioned the Government's contention that Daniel LaPolla's death resulted from a deliberate killing. Now in this case, the cross-examination and some of the exhibits of two of the defendants, Guillette and Joost, raised the possibility that the death of LaPolla might not have been the result of a killing, but may have been the result of LaPolla's own action in setting a bomb for others and then accidentally suffering death by stopping by to activate it or make some adjustment to it. Defendants Zinni and Bucci do not make that claim at all. I specifically instruct you that you are to draw no inference against any defendant because two of the defendants have put forth this possibility for your consideration. Furthermore, I specifically instruct you that since the burden of proof rests on the Government, no defendant has any obligation to prove that

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LaPolla's death was accidental. It is entirely proper for a defendant to suggest to you a theory inconsistent with the Government's contentions. If you are not persuaded beyond a reasonable doubt that LaPolla's death was the result of an intentional killing, then you cannot convict any defendant on the charge in the third verdict of Count One, that is, conspiring to intimidate with death resulting, nor on the charges in Counts Two and Three. If the death were accidental, or if you are not persuaded beyond a reasonable doubt that it was deliberate, you could still find a defendant guilty of the second verdict on Count One, that is, conspiring to intimidate, if you were satisfied that the first six elements of that offense have been established beyond a reasonable doubt.

RIGHT TO INTERVIEW WITNESS

You have heard testimony that some of the defendants and the witness Marrapese attempted to gather information about Daniel LaPolla for use at the M-16 trial. In weighing this evidence you must keep in mind that the Constitution of the United States guarantees to every person accused of a crime the right to investigate the background of prospective witnesses and to interview persons who may know the witnesses.

In addition, an attorney representing a person accused of the commission of a crime has an absolute right to seek out witnesses, to interview them and to gather information about their backgrounds. This is part of his obligation ~~to this obligation~~ to his clients to represent them effectively.

It makes no difference whether the prospective witnesses will testify on behalf of the Government or whether the witness is in some form of protective custody or in

protective relocation. A person accused of a crime and his attorney or any other person acting on behalf of the defendant has a right to seek out the witness, to interview him and to learn about his background.

No - No - No.

made an equivocal remark which the Government contends indicates

Granted in substance except as noted.

SECTION 241 VIOLATION

Count 1 charges a violation of Section 241 of the criminal code. The statute reads as follows: "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured by him by the Constitution or laws of the United States" each shall be punished, and the statute further provides that "if death results," they shall be subject to a greater punishment. I should point out that in the event of a conviction on this or any other count, the matter of punishment is solely a question for the Court and not for the jury's consideration at all. Your task is to determine whether or not the crimes charged in each count have been proved beyond a reasonable doubt.

No, not pet

Count 1, in the indictment against Guillette, Joost, and Zinni reads as follows:

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"From on or about May , 1972 until on or about September 29, 1972 in the District of Connecticut, and elsewhere, DAVID GUILLETTE, ROBERT JOOST, WILLIAM MARRAPESE, and NICHOLAS ZINNI, the defendants herein, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to injure, oppress, threaten and intimidate one Daniel Lapolla, a citizen of the United States of America, in the free exercise and enjoyment of a right and privilege secured to him by the Constitution and laws of the United States and because of him having exercised said right and privilege, to wit, the right and privilege to give information to the proper authorities concerning violations of the gun control laws of the United States, and the right and privilege to be a witness in a judicial proceeding in the United States District Court for the District of Connecticut, to wit, the case of United States v. William Marrapese, Nicholas Zinni, Robert Joost and David Guillette, Criminal No. H-264; and it is further alleged that this combination and conspiracy resulted in the death of Daniel Lapolla.

All in violation of Section 241, Title 18, United States Code."

Count 1, in the indictment against Bucci, uses almost identical language with three exceptions: the starting date of the conspiracy is alleged to be May 4, 1972, instead of just May, 1972; John Housand's name is added to the members of the alleged conspiracy; and, in what appears to be a typographical area, one line from the language of the indictment in H-524 has been omitted from the Bucci indictment. While that omission makes for a slightly awkward reading, the elements of the offense charged in Count 1 are the same for all defendants.

There are seven elements of the crime charged in Count 1, each of which the Government must prove beyond a reasonable doubt before there can be a conviction on that count. Let me first list them and then discuss them in some detail. First, that there existed the conspiracy charged in the indictment; second, that it was the purpose of the conspiracy to injure, oppress, threaten or intimidate Daniel LaPolla; third,

previously explained to you that in considering Count 1, there

that the intended victim, Danial LaPolla, was a citizen of the United States, fourth, that the conspiracy was directed at the free exercise or enjoyment by LaPolla of a right or privilege secured by the Constitution or laws of the United States, fifth, that the defendant whose case you are considering wilfully became a member of the conspiracy, sixth, that such defendant became a member with the specific intent of interfering with LaPolla's federally protected rights, and seventh, that the death of Danial LaPolla resulted from the conspiracy.

With respect to Count 1, there are three possible verdicts as to each defendant: ~~not guilty~~, guilty of conspiring to intimidate, or guilty of conspiring to intimidate with death resulting. If you find with respect to any defendant that only the first six elements have been proved beyond a reasonable doubt, you should find that defendant guilty of conspiring to intimidate. If you find with respect to any defendant that all

seven elements have been proved beyond a reasonable doubt, including the last element that the death of LaPolla resulted from the conspiracy, then you should convict that defendant of conspiring to intimidate with death resulting. If you find with respect to any defendant that any one of the first six elements has not been proved beyond a reasonable doubt, then you must find that defendant not guilty of Count 1.

Now let me turn to each element in some detail. The first element concerns the existence of the conspiracy charged in the indictment. A conspiracy is an agreement between two or more persons to accomplish some criminal or unlawful purpose. It is sometimes referred to as a partnership in crime. The agreement is the essence of the conspiracy. The agreement is established if you find that two or more persons, in any manner, through any contrivance, impliedly or tacitly came to a common understanding to violate the law. Neither express language nor

any particular words are needed to indicate that such an agreement was formed.

Will give in substance

To establish the existence of a conspiracy, the Government is not required to show that two or more persons entered a solemn compact in writing stating that they have formed a conspiracy and detailing its objectives. Indeed, it would be surprising if there were such a formal agreement. Your common sense will tell you that when people join together in forming a criminal conspiracy, much is left to their unexpressed understanding. From its very nature a conspiracy is usually secret in its origin and execution.

In determining whether there has been an unlawful agreement, you may consider the acts and conduct of the defendant and of the alleged co-conspirators that are done to carry out an apparent criminal purpose. The adage "action speaks louder than words" is often applicable. Sometimes the only available

evidence is a series of disconnected acts, which, when taken together, show the existence of a conspiracy.

The second element concerns the purpose of the conspiracy. Was it to injure, oppress, threaten or intimidate Daniel LaPolla? The words injure, oppress, threaten, or intimidate are not used in any technical sense but may cover a variety of conduct intended to frighten or harm a person. They do not include conferring a benefit such as a bribe. If you find, as the Government contends, that the purpose of the conspiracy was to kill LaPolla, that is oppression or intimidation within the meaning of Count 1.

The third element is that the intended victim was a citizen of the United States. You may recall there is in evidence LaPolla's birth certificate showing that he was born in the United States. Every person born in the United States is a citizen of the United States.

Give it substance.

The fourth element concerns a further refinement of the purpose of the conspiracy: was it directed at the free exercise or enjoyment by LaPolla of a right or privilege secured by the Constitution or laws of the United States? The Government contends that the objective of the conspiracy was to injure or intimidate LaPolla because he had exercised his federally protected right to give information to the proper authorities concerning violations of federal law, and also to prevent LaPolla from exercising his federally protected right to appear as a witness in a federal prosecution. I instruct you that both the right to give information to proper authorities concerning federal violations and the right to be a witness in a federal prosecution are rights protected by the Constitution and laws of the United States. The Government has offered evidence to show that the alleged conspirators knew LaPolla was giving information to federal authorities concerning a

Give Mt Substantial

violation of the federal laws concerning interstate shipment of stolen guns and that LaPolla was going to be a witness in a federal prosecution concerning such federal gun law violations. If you find beyond a reasonable doubt that the objective of the conspiracy was to intimidate or injure LaPolla either because he had given information of federal law violations or because he was going to be a witness in a federal prosecution, you may find that the fourth element has been established.

The fifth element is whether the defendant whose case you are considering wilfully became a member of the conspiracy. To find that a defendant became a member of the conspiracy, you must be persuaded beyond a reasonable doubt that by his words or his conduct or both he clearly indicated his decision to join the conspiracy with the intention of advancing its objectives, and that he wilfully participated in the plan and in some sense promoted the venture himself, or made it his own, or indicated

that he had a stake in the venture. On this point, it is important to bear in mind that a defendant's joining of the conspiracy cannot be shown by his mere presence with other members of the conspiracy even if he has knowledge that there is a conspiracy being formed or existing. Guilt by association is foreign to our law, and being present with criminals, even if one knows of their criminal activity, does not make a person a participant in a criminal enterprise. One may join a conspiracy without being assigned any particular role in the conspiracy. And a defendant can be found to have joined a conspiracy even if he does not know all the members of the conspiracy and does not know all the details of the conspiracy. But there must be proof beyond a reasonable doubt that he knows the objectives of the conspiracy and makes clear his intention to join the conspiracy in order to promote those objectives. A defendant may be found to have joined a conspiracy after it has initially

Have substance but not further form

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In considering whether a person joined a conspiracy, you do not rely on what someone else thought he meant by what he said. This is a decision for you to make. You first have to decide whether you believe that a person did say certain things or did take certain actions. If you find that he did, you then have to decide whether in your judgment the words spoken or actions taken prove beyond a reasonable doubt that he joined a conspiracy.

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been formed, and if he does join, he is as responsible for the conspiracy and for all acts taken in furtherance of it as those who joined in the beginning. However, a defendant is not liable for any action taken by a co-conspirator beyond the scope of the conspiracy he understands he is joining.

As I mentioned, the act of joining the conspiracy must be done wilfully. An act is done wilfully if it is done voluntarily and intentionally, with a specific intent to do something that the law forbids, that is, with a bad purpose either to disobey or disregard the law.

In deciding whether there is proof beyond a reasonable doubt that a defendant whose case you are considering knowingly became a member of the conspiracy, you may consider only the statements and actions of that defendant. You look only at what he said and what he did in deciding whether he joined the conspiracy. Of course, in deciding whether a defendant's words or actions demonstrate a joining of the conspiracy, you are

entitled to consider the circumstances then existing that are known to the defendant at the time he makes the statements or does the acts that you find are established. In other words, his words or acts are to be considered in context, not in the abstract.

If you find that a defendant did join the conspiracy, then you can find that he is liable for all of the statements and actions of other members of the conspiracy that are made or taken in furtherance of the objectives of the conspiracy. And he is liable even if these statements were made or these actions were taken in his absence.

While each element of the offense charged in Count 1 must be proved beyond a reasonable doubt as to the defendant whose case you are considering, I urge you to give careful consideration to whether or not this element of wilfully joining the conspiracy has been established. If a defendant

made an equivocal remark which the Government contends indicates his assent to the conspiracy, such as, for example, the remark Marrapese says Zinni made concerning John Housand, consider carefully whether or not you are persuaded beyond a reasonable doubt that the defendant did by that remark clearly indicate his intention to join the conspiracy. If a defendant took certain actions which the Government contends indicate his assent to the conspiracy, consider carefully whether or not you are persuaded beyond a reasonable doubt that by those actions the defendant clearly indicated his intention to join the conspiracy. Even though you may be somewhat suspicious as to why the defendant made a remark or took certain actions, if you have a reasonable doubt that his remark or actions indicate an intention to join the conspiracy, you must acquit him.

The sixth element is whether a defendant, in becoming a member of the conspiracy, did so with the specific intent to interfering with or denying LaPolla his federally protected

rights. If, for example, a defendant joined a conspiracy to kill LaPolla to settle a personal grudge, that would not satisfy this element of the offense. However, you need not find that a defendant, in joining the conspiracy, was thinking in constitutional terms or even knew that the right he was denying LaPolla was a right protected by the Constitution or laws of the United States. The requisite specific intent is established if you find beyond a reasonable doubt that a defendant joined the conspiracy with the specific intent of intimidating LaPolla because he had given information to the authorities of a federal law violation or to prevent him from becoming a witness in a federal prosecution.

If all of these six elements are proved beyond a reasonable doubt as to any one defendant, then you should find him guilty of conspiring to intimidate. If, in addition, you find the seventh element established beyond a reasonable doubt, namely - that the death of LaPolla resulted from the conspiracy, then you should find the defendant guilty of conspiring to

intimidate with death resulting. A death results from a conspiracy if it is caused by one or more of the conspirators in taking some action in furtherance of the objectives of the conspiracy.

Now, having explained the elements of the crime charged in Count 1, let me narrow the issues for you somewhat by relating the claims made by the various parties to the elements themselves. Obviously there is a fundamental dispute between the Government and all of the defendants as to whether a conspiracy to intimidate LaPolla was ever formed. The Government alleges that the conspiracy was formed at a meeting in Carter's jewelry store on May 8, 1972. The defendants dispute that such a meeting ever occurred. I specifically instruct you that you cannot find that the conspiracy charged in Count 1 was formed unless you find beyond a reasonable doubt that there was a meeting on May 8 in Carter's jewelry store, at which an agreement was made to kill Daniel LaPolla. If you do

not find beyond a reasonable doubt that such a meeting occurred, you must acquit all defendants of the crime charged in Count 1. In determining whether or not such a meeting occurred, you are entitled to consider all of the evidence in the case, except for evidence that I have specifically told you is to be considered only against a particular defendant. In deciding whether the meeting occurred, you are not limited to the testimony concerning May 8. You can consider evidence by ~~both sides~~ concerning events before and after May 8. If you find that the meeting did occur and that an agreement to kill LaPolla was reached, then you may return a verdict of guilty on Count 1 as to any defendant as to whom you find all of the elements of Count 1 have been established beyond a reasonable doubt.

Now there is another matter in dispute between the parties, and this matter has an important bearing on what has been referred to as the "death resulting" issue. I have

previously explained to you that in considering Count 1, there are three different verdicts you can return as to each defendant, and I again emphasize that you must consider your verdicts as to each defendant separately. The three verdicts are: not guilty, guilty of conspiring to intimidate, and guilty of conspiring to intimidate with death resulting. The issue I am now focusing on concerns the parties' claims as to whether the conspiracy ended as to some or all of the defendants. You will recall that there was testimony as to what Marrapese and Bucci and perhaps others said shortly after the May 8 meeting, and there was testimony concerning taking a gun back from John Housand. Now of course the defendants contend that the conspiracy was never formed in the first place. But, if you find beyond a reasonable doubt that it was formed, then you encounter a further contention of the defendants, based entirely on the testimony from the witness Marrapese, that the conspiracy

terminated. The Government contends that it continued and culminated in the killing of LaPolla on September 29.

Let me first explain the legal principles concerning this issue and then relate the parties' claims to these principles. Once a conspiracy is formed, there is a presumption that it continues in existence unless it appears that the conspiracy has been brought to an end or terminated. Moreover, the participation of any one or more members of the conspiracy can terminate if he or they withdraw from the conspiracy. Termination of a conspiracy means it is completely brought to an end. A conspiracy does not terminate if its objective is merely delayed or deferred pending other developments. Withdrawal from a conspiracy occurs when a person makes a clean breast of the plan to law enforcement authorities or reaches an understanding with members of the conspiracy or gives notice reasonably calculated to reach other members of the conspiracy

that he is no longer a participant. Mere cessation of activity in furtherance of the conspiracy is not sufficient to show a withdrawal. While the Government has the burden of proof to establish each element of the crimes charged, the burden of proof is upon ~~the~~ a defendant to establish termination of a conspiracy or withdrawal from it.

In this case, the defendants contend that even if a conspiracy to kill LaPolla was formed, which they dispute, it ended when the gun was taken back from Housand. And the claim is made that even if it continued, some or all of the defendants withdrew from it on the theory that they understood it was ended. If you find that the conspiracy was formed, but ended before LaPolla's death on September 29, then any defendant whom you find to have become a member of the conspiracy can be found guilty of conspiring to intimidate with death resulting. In other words, if the conspiracy ended before the death, then the

members can be found guilty of the conspiracy itself, if they joined it, but not of a death resulting from a conspiracy. Since the essence of the crime of conspiracy is the criminal agreement, a person who joins such an agreement can be guilty of conspiracy whether or not the objective of the conspiracy is carried out while he is still a member. Similarly, if you find that any defendant joined the conspiracy but withdrew from it prior to the death of LaPolla, then that defendant can be found guilty only of conspiring to intimidate and cannot be found guilty of conspiring to intimidate with death resulting. The Government, on the other hand, contends that the conspiracy never terminated until the death of LaPolla and that no members of the conspiracy withdrew. The Government contends that at most a decision was reached to postpone the killing to see if less drastic forms of persuasion would suffice. The various contentions of the parties create factual disputes that you

must resolve. Of course, a person who joins a conspiracy to kill that continues until the death results remains liable for the resulting death even though the technique of killing has shifted from shooting to dynamiting. One other point on this subject -- if a conspiracy is formed, it may continue with some members still a part of it even if one or more other members are no longer participants. The withdrawal of one member does not terminate a conspiracy, unless there are only two members, since a person cannot conspire with himself. So, as I have said, you have to make individual judgments as to whether each defendant ever became a member of the conspiracy and if he did, whether he is liable only for conspiring to intimidate or is also liable for conspiring to intimidate with death resulting if the conspiracy remained in existence until LaPolla's death and if the defendant whom you are considering remained a member of the conspiracy until LaPolla's death.

ALIBI

Evidence has been introduced by some of the defendants to show that on the morning of May 8, 1972, they were at a location other than Carter's jewelry store. Guillette testified he was at the home of his brother-in-law, and Joost testified he was at his own home. I remind you that a defendant never has the burden of proving his innocence. If, after considering all of the evidence, you have a reasonable doubt as to whether a defendant was at the meeting at Carter's jewelry store on May 8, you must find that defendant not guilty of Count One, and you would not be able to use the joint venture or conspiracy theory in convicting that defendant on Counts Two or Three.

OTHER CRIMES

During the course of this trial, you have heard testimony implicating some of the defendants in criminal activity for which they have not been convicted. For example, there was some evidence concerning the role that Guillette and Joost may have played in connection with the stolen M-16's. That evidence may be considered as bearing on whether the defendants had a motive to commit the crimes charged in the indictment. However, I emphasize that the defendants are on trial only for the crimes charged in the indictments. You cannot use evidence of other crimes simply to conclude that one or more of the defendants is a bad person and for that reason ought to be convicted. Whether or not any defendant ought to be convicted depends solely on whether his guilt of the crimes charged in this case has been proved beyond a reasonable doubt.

CREDIBILITY OF WITNESSES

Now, in performing your function, one of the most important things you have to do is pass upon this matter of credibility, that is, the "believability", of the various witnesses who have appeared before you. In passing on the credibility of each of the witnesses, there are certain considerations you may well have in mind. One of these is the appearance which the witness made when he was on the stand; you should try to "size him up". Did he appear to be telling the truth? Did he appear to be honest? Did he appear to be intelligent? That is, did he appear to be a person who could have observed accurately what he is telling you about; who would be likely to have remembered it accurately, and who was capable of reporting it to you accurately?

Another question for you to have in mind regarding each witness is the question as to whether the

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the story he has told you is plausible. Does it ring true, or are there inconsistencies in it? How does it fit in with other evidence in the case which you do believe and other facts you find to have existed? Does it jibe with that evidence and those facts? In short, does the testimony which was given by the particular witness whose credibility you are considering seem to you to be plausible?

The testimony of a witness may be discredited or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of a witness and are not to establish the truth of the earlier statement. For example, if a witness testified that something happened on a Wednesday, and on an earlier occasion he is shown to have said that it happened on a

Saturday, you may consider the earlier statement in deciding whether to believe him when he says the event happened on a Wednesday. But the earlier statement is not evidence that the event actually happened on a Saturday. In determining credibility it is up to you to decide what significance to give to prior inconsistent statements.

I further instruct you that if a witness reaffirms in his testimony the truth of something he said on a previous occasion, then that previous statement may be considered as fully as his testimony in court.

You may also bear in mind that if you should find that any witness has been deliberately falsifying on any material point in his testimony, you are privileged to take that fact into consideration in determining whether he has falsified on other points. But, simply because you find that

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a witness has not repeated one fact to you accurately, it does not necessarily follow that he is wrong on every other point. A witness may be honestly mistaken on one

element of his testimony and be entirely accurate and correct on the other points. A witness may even be deliberately falsifying on one point and yet be entirely truthful on all other points. But if you find that a witness has deliberately lied on one material subject it is only natural that you should be suspicious of his testimony on all subjects, and under those circumstances, you are entitled to disbelieve his whole testimony. Whether you do disbelieve it or not, however, lies in your own sound judgment. You have the right to reject testimony even though it is uncontradicted, if you feel you have a justifiable reason for doing so.

Another question you may well ask yourself in passing on the credibility of any witness is whether that witness has any bias or interest in the outcome of the case, and if so, whether he has permitted that bias

or interest to color his testimony. It, of course, does not follow simply from the fact that a witness does have a bias or does have an interest in the outcome of the case that his testimony is to be disbelieved. There are many people who, no matter what their interest in the outcome of the case may be, would not testify falsely. On the other hand, a jury should always bear in mind that if a witness has a decided bias or has an interest in the outcome of the case, that bias or interest offers something of a temptation to shade his own testimony in accordance with his bias or sway him to advance his own interest, whether that be to gain some advantage for himself or to do damage to another. It may even be that his bias or interest has so operated on his mind that he has come to believe what he wants to believe and therefore he may testify falsely without

at the time consciously realizing that his testimony is false. It is therefore obvious that if it should appear as regards any witness whose credibility you are testing that he has some bias or some interest in the outcome of the case, that fact is one which you should take into consideration in weighing the testimony.

In short, you are to bring to bear upon the credibility of witnesses the same considerations and use the same sound judgment you apply to questions of truth and veracity which are daily presenting themselves for your decision in the ordinary affairs of life.

CREDIBILITY OF INFORMER

Let me add an additional word about the considerations to bear in mind in weighing the credibility of the witness Marrapese. He testified that he agreed to cooperate with the Government in this case and as a consequence his sentence was reduced from a term of life imprisonment to six years. While he stated he did not know when he would be eligible for parole, it is likely that he will be at least eligible for parole consideration in two years from the date the original life sentence was imposed. In addition, he testified that he has not been prosecuted for certain crimes which he has admitted.

You are instructed that the testimony of an informer who provides evidence against a defendant in the hope of obtaining a reduced sentence or ~~immunity from~~ prosecution for other offenses or for other personal advantage must be examined and weighed by the jury with greater care than the testimony of

(6)

an ordinary witness. The jury must consider whether the informer's testimony has been affected by self-interest, ~~or by prejudice against the defendants.~~ Furthermore Marrapese testified that he committed perjury during the M-16 trial. You should bear in mind that the testimony of an admitted perjurer and a person who, by [illegible]ding information, has secured a significant personal benefit, should be considered with caution and weighed with great care. Of course there is no rule of law that requires you to disregard his testimony, and in fact you are entitled to accept it, but you should bear these considerations in mind in deciding the extent to which you choose to accept his testimony.

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DEFENDANT AS WITNESS -- IMPEACHMENT

In this case, two of the witnesses you heard were defendants. A defendant who wishes to testify is a competent witness, and a defendant's testimony is to be judged in the same way as that of any other witness.

Now in this case, the testimony of the defendants Guillette and Joost ~~was~~ sought to be impeached or discredited by a showing that they had previously been convicted of felonies, that is, crimes punishable by imprisonment for more than one year. Prior conviction does not render a witness incompetent to testify, but is merely a circumstance which you may consider in determining the credibility of the witness. It is the province of the jury to determine the weight to be given to any prior conviction as impeachment. Where, as here, ~~one of the~~ a witness~~es~~ who was sought to be impeached by prior felony convictions is a defendant, the jury must take care to

consider the prior convictions only as they may affect credibility and must not consider them as evidence that the accused committed the crime with which he is now charged.

DEFENDANT'S FAILURE TO TAKE STAND

The law does not compel a defendant to take the witness stand and testify, and no presumption of guilt may be raised, and no unfavorable inference may be drawn from the fact that a defendant ~~does~~ not ~~see fit~~ to testify.

You must not permit such a fact to weigh in the slightest degree against the defendant, nor should it enter into your discussions or deliberations. ~~The~~ A defendant is not required to establish his innocence; he need not produce any evidence whatever if he does not choose to do so.

As I have indicated, the burden is on the Government to prove ~~the~~ a defendant guilty beyond a reasonable doubt; if it fails, ~~the~~ a defendant has the right to rely on that failure and of right must be acquitted.

EXPERT TESTIMONY

You will recall that the Government offered the testimony of a medical examiner and two fingerprint examiners, and the defendants offered the testimony of Marrapese's psychiatrist.

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses." Witnesses who, by education and experience, have become expert in some art, science, profession, or calling, may state an opinion as to relevant and material matter, in which they profess to be expert, and may also state their reasons for the opinion.

You should consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should decide that the opinion of

an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

Let me add a word about the testimony of the two fingerprint examiners. You will recall that both examiners testified they could not identify any of the latent prints found on the explosive device as belonging to any of the defendants. Both indicated that 12 points of similarity are required between a latent print and a known print before a latent print can be identified as having been placed by a particular person. The examiner did, however, give some testimony concerning a small number of points of similarity between a partial latent print and the known print of defendant Guillette. I instruct you to be extremely cautious in your

evaluation of this testimony. Specifically, I instruct you that you cannot from their testimony alone draw the inference that Guillette's print was found on the explosive device. Moreover, the examiners gave you very little to go on in reaching any conclusion as to how common or uncommon it is to find a small number of points of similarity between a latent print and a known print. And the examiners themselves were in disagreement on several aspects of their testimony. So, as I mentioned when they testified, don't jump to any conclusions simply because witnesses say something about fingerprints. They identified no one. You can consider their testimony for what it is worth along with all of the other evidence in the case, but you would be entirely justified in giving their testimony no weight at all. What weight you choose to give their testimony is entirely up to you.

In considering the testimony of Government agents and Government experts, you should bear in mind that their testimony is entitled to no greater significance simply because they are employees of the Government. Their testimony should be subject to the same considerations you apply to any witness, regardless of their employment by the Government.

TRANSCRIPT OF INFORMANT

You will recall that there was read into evidence the questioning of an unidentified informant who was questioned by the prosecutor in the chambers of Judge Clarie. That informant told of a conversation he had with someone who identified himself as Anthony Souca. As I mentioned at the time, this testimony comes to you in a somewhat unusual form. You do not know who is testifying, and you cannot see him to judge his demeanor like other witnesses. Moreover, you cannot see this man Souca and make your judgments about his demeanor. At the same time, the defendants are operating under the limitation that they cannot cross-examine the informant because he was not on the witness stand and they do not know who he is, the Government having decided to protect his identity from disclosure. You may infer, though you are certainly not required to do so, that if the informant were called as a

witness, he might recall some additional detail of his conversation with Souca that would be unfavorable to the Government. However, it is also possible that further questioning of him, by either the defendants or the Government, might bring out some detail that makes his account of the Souca conversation less believable. You are entitled to give that testimony such weight as you think it deserves, but simply bear in mind the somewhat unusual circumstances under which it came into this case.

CAUTION

Before turning to some final instructions, let me make this observation about this case. It is obviously a serious matter, involving the death of another person. And there has been evidence that three of these defendants, the ones who were defendants in the M-16 case, had a motive to deter LaPolla from being a witness in the M-16 case. Now the circumstances of the death and the evidence of motive are all matters that are entirely proper for your consideration. But I urge you not to be precipitous in any of the judgments you must make in this matter. For example, it would be entirely improper for you to say well, the witness is dead, and his testimony might have been harmful to some of these defendants and therefore we ought to find them guilty. You have a solemn responsibility to determine issues of guilt or innocence of each defendant according to all of the evidence in the case and

according to these instructions of law. Approach that task with the care and seriousness it deserves. If you are persuaded that a defendant's guilt on one or more counts is established beyond a reasonable doubt, then you should declare him guilty. And if you are not persuaded beyond a reasonable doubt of his guilt, then declare him not guilty. Do not speculate. Do not let your emotions distort your judgment. If you conscientiously apply the law to the facts as you have found them, your verdicts will promote the cause of justice whatever those verdicts may be.

CONCLUSION

In conclusion, members of the jury, I impress upon you that you are duty-bound as jurors to apply the law, as you have been advised by the Court, to the facts of this case, as you find them.

Now, take this case with you to the jury room. Select a foreman or forelady. Determine the facts on the basis of the evidence, as it has been presented to you; apply the law as I outlined it to you; then render a verdict fairly, uprightly, and without a scintilla of prejudice.

When you reach a verdict, it must be unanimous. It is the duty of each juror to discuss and consider the opinions of the other jurors. Despite that, in the last analysis, it is your individual duty to make up your own mind, and to decide this case upon the basis of your own individual judgment and conscience.

With that, the jury may retire to the jury room. Proceed to your consideration of the case just as soon as the bailiff brings you the indictment and the exhibits. When you have reached a verdict, inform the Clerk through the bailiff. Then return to the courtroom and announce your verdict.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. H-524
DAVID GUILLETTE and ROBERT JOOST	:	

DEFENDANTS' AMENDED THIRD MOTION FOR A NEW TRIAL

Pursuant to Title 28, Section 2255 of the United States Code, Rule 33 of the Federal Rules of Criminal Procedure, the fourth, fifth and six amendments to the Constitution of the United States, the rule of Brady v. Maryland and the doctrine of newly discovered evidence, the defendants DAVID GUILLETTE and ROBERT JOOST respectfully request the Court to DISMISS THE INDICTMENT or in the alternative to order a NEW TRIAL on the following grounds:

COUNT I: FAILURE TO DISCLOSE PROMISES AND PERJURY

1. Purusant to defendants' request the Government disclosed prior to trial that the following promises and considerations were provided to John Anthony Housand:

a. As of 10/5/73, $200.00 had been paid to Housand for maintenance expenses.

b. The Government would bring his cooperation to the attention of North Carolina parole authorities. (Exhibit E)

2. At trial of defendants Housand further disclosed that in addition to the promises and considerations set forth above, he was promised immunity by Mr. Coffey in connection with the part he played in the LaPolla conspiracy. (Exhibit F)

KLEY & SANTOS
TORNEYS AT LAW
RUSS STREET
FORD, CONN. 06103
ONE 203 - 249-6548

Counsel for Mr. Joost asked Housand the following question in connection with his admission that he burglarized a house before he left Rhode Island in June 1972:

> Q. And has anybody in any way, either State or Federal indicated to you whether or not you are going to be prosecuted for that charge?
>
> A. No, sir. (Exhibit G)

3. In direct contradiction to this testimony Housand testified that Mr. Coffey offered him immunity for all crimes he may have committed when he was in the state of Rhode Island in April, May and June 1972 during the trial of co-defendants Marrapese and Zinni. (Exhibit H) These crimes include: possession of burglar tools; conspiracy to transport interstate securities and burglary. Neither Mr. Housand nor Mr. Coffey advised the defense, the Court or the jury of the promise.

4. In addition to and distinct from the matters alleged in the preceding paragraphs, Mr. Housand confessed to the United States Attorney for the District of Connecticut on November 13, 1974 that he perjured himself atthe trials of the defendants and co-defendants Marrapese and Zini and failed to disclose additional promises and rewards offered to him by Government agents, officers and attorneys.

5. The foregoing evidence was not available to these defendants in the exercise of due diligence at the time of their original trial.

6. Such evidence is material to defendants' guilt or innocence and is not merely cumulative of evidence produced at their trial.

7. Such evidence if presented to a jury would have an effect upon the ultimate outcome of any subsequent trial of these defendants.

CKLEY & SANTOR

COUNT II: FAILURE TO DISCLOSE BRADY AND 3500 MATERIAL

1. Prior to, during and subsequent to the trials of the defendants, John Anthony Housand mailed numerous letters to Government agents, officers and attorneys.

2. The aforementioned letters discussed matters Housand testified to in his direct examination during the trial of the defendants or referred to promises and rewards or to Housand's motivation or relectance to testify and therefore constituted material required to be disclosed to the defense by Title 18, U.S.C. §3500 or pursuant to the rule of Brady v. Maryland and the orders of the Honorable T. Emmet Clarie issued prior to and during trial.

3. The foregoing allegations are based in part upon Housand's confession of perjury to U. S. Attorney Peter Dorsey on November 13, 1974.

4. Paragraphs 5 through 7 of the first count are hereby made paragraphs 4 through 6 of this count as if fully set forth herein.

COUNT III: GOVERNMENT MISCONDUCT

1. Prior to, during and subsequent to the trial of the defendants, Government and State agents, officers and attorneys engaged in a course of conduct which denied to defendants their rights as citizens to due process of law, equal protection of the law, effective assistance of counsel and liberty in that they:

a. Failed to disclose or disclosed in an untimely manner Brady material and promises to John Anthony Housand.

b. Failed to thoroughly and objectively investigate the facts of this case and pursue all reasonable leads.

c. Failed to disclose 3500 material.

d. Destroyed potentially exculpatory evidence.

e. Conducted illegal searches and seizures.

f. Proferred a witness knowing or having reason to know that said witness would perjure himself at the trial of the defendants and co-defendants.

COUNT IV: FINGERPRINT REPORT

1. Pursuant to defendants' pre-trial motion for all scientific reports, the Government disclosed a latent fingerprint analysis report signed by Anthony Varcos, Special Agent. In that report, Varcos stated that certain latent prints found on the sticky side of black electrical tape on the dynamite bomb at Oneco were compared with the prints of the four co-defendants and Edward Sitko. The report further stated that all attempts to match the prints with those of the suspects proved negative. However, the report goes on to note:

> "It is the opinion of the undersigned that the latent prints in question are unidentifiable due to the lack of sufficient ridge detail and identifiable characteristics." (Exhibit A)

In light of this opinion, the appellants did not call Mr. Varcos as a witness at trial.

2. On June 25, 1974, the Government disclosed a new fingerprint report by Mr. Varcos dated June 17, 1974. In this report Mr. Varcos states that one of the latent prints found on the Ray-O-Vac battery at Oneco had "a sufficient number of characteristics appearing on the latent print to make an identification possible. Varcos then stated that this print and the others found at Oneco "were examined and compared with the known fingerprints and palm prints of suspects submitted, with negative results." (Exhibit B)

3. On approximately June 17, 1974, the Government disclosed a fingerprint report by Sgt. James E. McDonald of the Connecticut State Police. The report is dated October 3, 1972 and states the following:

BUCKLEY & SANTOS
ATTORNEYS AT LAW
51 RUSS STREET

FINDINGS: Three identifiable partial latents were processed from Q-1 (Ray-O-Vac battery). Two partials are identifiable to the area of the friction ridge pattern on the extreme sides of the fingers, and one could be palm area.

COMMENTS: The latent partials will be kept on file for examination with the described friction ridge area when submitted when suspects are fingerprinted. It is requested that 'Major' printing be done, as the needed partials area is not normally printed when a suspect is being fingerprinted. (Exhibit C)

4. On October 12, 1972 the four co-defendants and Edward Sitko were subpoenaed by a federal grand jury and ordered to submit to "Major" printing by the Honorable T. Emmet Clarie. Prints of the sides of the fingers and palms were taken.

5. Prior to trial the defendants filed a motion wherein they requested this Court to order the prosecutor to examine the file of the State's Attorney for Windham County for Brady and other material. The motion was denied. Also, a motion for all scientific reports was filed by defendants.

6. At the trial of co-defendants Marrapese and Zinni, Sgt. McDonald testified that the prints found at Oneco were identifiable but that he was never given sufficient samples of the fingerprints of the four co-defendants to make an identification. When this information was disclosed, co-defendants Marrapese and Zinni voluntarily submitted to additional printing. McDonald then testified that their prints did not match the prints found at Oneco. (Exhibit D)

7. There can be no dispute that the Varcos and McDonald reports constitute Brady material and newly discovered evidence. As the Court knows, counsel for defendants have contended that the evidence is insufficient to sustain the jury finding that the defendants caused the death of LaPolla. This Court has rejected

BUCKLEY & SANTOS

that contention. However, if this Court is correct, the evidence is only sufficient to support a finding that one or more of the four co-defendants planted the bomb at Oneco. There was no evidence of agency on this point.

Therefore, if a fingerprint was found on the Ray-O-Vac battery at Oneco which does not match the prints of any of the co-defendants, this information by itself would cause a jury to find the defendants not guilty.

8. The nondisclosure of Sgt. McDonald's report prior to trial and the "inaccurate" report of Mr. Varcos is part of a pattern of gross negligence by ATF experts and the Government which has resulted in the destruction of evidence and continuous violations of the Brady rule. The following examples are cited:

A. At the Noblemet hearing ATF Agent Murphy testified that he threw out foot-print casts and took burglar tools found at the scent to his home.

B. The prosecutor, Mr. Coffey, disclosed on the first day of trial a report that one Anthony Souca told a government informant that he killed Daniel LaPolla for William Marrapese. This information was in the possession of ATF agents as early as January 1973.

C. The prosecutor, Mr. Coffey, failed to disclose a statement obtained from Marrapese on September 10-11, 1973 which exculpated co-defendant JOOST and contradicted the testimony of John Anthony Housand that a meeting was held at Carter's Jewelry Store on May 8, 1972.

D. The prosecutor, Mr. Coffey, stated to this Court that he believed the Government never obtained a statement from Robert Brown, a State of Rhode Island informant, which contradicted the testimony of Housand. In fact, ATF Agent Murphy, who is referred to above, obtained a statement from Brown in November 1973 wherein Brown stated that Attorney Bucci was in court on May 8, 1972 when he testified in the case of State v. Robert Giorgi. This statement was disclosed to the defendants a few days before they rested their case and was unavailable to the defendants for the purpose of cross-examining Housand and refreshing the recollection of Attorney Bucci and other defense witnesses.

E. An ATF expert, Dr. Elliot Byall, filed a report that 40 strand wire was found at Noblemet and in Guillette's car. This finding formed the basis for obtaining a warrant to search Guillette's apartment. Prior to trial, Dr. Byall admitted that he miscounted the strands and his expert opinion contained in paragraph 11 of the affidavit in support of the search warrant was erroneous. Without the opinion the warrant would not have issued.

9. Paragraphs 5 through 7 of the first count are hereby made paragraphs nine through eleven of this count as if fully set forth herein.

Dated at Hartford, Connecticut, this 9th day of December, 1974.

The Defendant

DAVID GUILLETTE

By Hubert J. Santos
Hubert J. Santos, Esq.

The Defendant

ROBERT JOOST

By James A. Wade
James A. Wade, Esq.

C E R T I F I C A T I O N

This is to certify that a copy of the foregoing has been mailed to Robert Oser, Esq., Special Attorney, U. S. Department of Justice, 450 Main Street, Hartford, Connecticut.

Hubert J. Santos
Hubert J. Santos, Esq.

James A. Wade
James A. Wade, Esq.

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UNITED STATES GOVERNMENT

Exhibit A

Memorandum

TO : Special Agent in Charge, ATF, Boston

DATE: NOV 20 1972

FROM : Chief, Enforcement Branch

SUBJECT: Latent Fingerprint Analysis - Case: SF-NAR-2031(7%),(ECA)(SF)

Transmitted herewith are Forms NAR 5-179 (Latent Fingerprint Analysis), prepared by the Identification Specialist, wherein he states the mentioned photographs of partial latent prints, found on a battery and on the sticky side of black electrical tape, were examined and compared with the known fingerprints and palm prints of suspects submitted. All attempts to make an identification proved negative.

It is the opinion of the Identification Specialist that the latent prints in question are unidentifiable due to the lack of sufficient ridge detail of identifiable character.

In order that this matter, the original analysis report will be sent to the office concerned.

Acting Chief, Enforcement Branch

Attachment

Buy U.S Savings Bonds Regularly on the Payroll Savings Plan

ALCOHOL, TOBACCO & FIREARMS

LATENT FINGERPRINT ANALYSIS

CONTROL
AGENCY CI-HAV-2031(72)(BCA)(SP) 163-72
LOCATION Bureau of Alcohol, Tobacco & Firearms
Hartford, Conn.

TO: Special Agent in Charge
Bureau of Alcohol, Tobacco & Firearms
P.O. Box 9115
J.F.K. Post Office
Boston, Mass. 02203

EVIDENCE SUBMITTED BY: Area Supervisor John H. Waddock

DATE SUBMITTED 11-13-72

DATE COMPLETED 11-15-72

Fold

☐ TAKEN FROM
☐ RECV'D. FROM
☐ FOUND AT

Examined at Connecticut State Police Lab., Bethany, Conn.

EVIDENCE SUBMITTED FOR EXAMINATION

A) Four (4) photographs of partial latent prints found on battery
B) One (1) photograph of partial latent print found on sticky side of black electrical tape
C) Five (5) sets of fingerprints and palm prints of following suspects: David George Guillotte; Robert M. Joost; William Luigi Marrapese; Nicholas David Zinni; Edward Sirko

SERVICES REQUESTED

Examine and c[illegible]are for possible identification

REPORT OF FINDINGS:

☐ POSITIVE IDENTIFICATION ☒ NEGATIVE IDENTIFICATION ☐ NEGATIVE FINDINGS ☐ NO CONCLUSION

☐ OTHER

The above mentioned photographs of parti[illegible] on a battery and on the sticky side of black electrical [illegible] and compared with the known fingerprints and palm prints of [illegible] suspects [illegible]. All attempts to make an identification proved negative.

It is the opinio[illegible] undersigned that the latent prin[illegible] question are unidentifiable due to [illegible] of sufficient ridge detail [illegible] identifiable characteristics.

DISPOSITION OF EVIDENCE:

☐ DESTROYED ☒ RETAINED ☒ ALL ☐ PARTIAL ☐ HELD ☐ PENDING TRIAL OR OTHER ACTION ☐ AWAITING PROPER DISPOSITION

SUPERVISOR, IDENTIFICATION UNIT (Signature) Anthony L. Vercoe

Anthony L. Vercoe
DEPARTMENT OF THE TREASURY

DATE OF REPORT 11-20-72

ATF FORM 5179 (REV. 12-68)

Supplementary

Exhibit B.

ALCOHOL, TOBACCO & FIREARMS

LATENT FINGERPRINT ANALYSIS

CASE NO. 2h09017315hhR(SF)

CONTROL NO. 163-72

AGENCY ~~SI-WAR-2031(72)(BGA)(SF)~~

LOCATION ~~Bureau of Alcohol, Tobacco & Firearms~~ Hartford, Conn.

TO: Special Agent in Charge
Bureau of Alcohol, Tobacco & Firearms
P.O. Box 9115
J.F.K. Post Office
Boston, Mass. 02203

EVIDENCE SUBMITTED BY: Group Supervisor, John H. Waddock

DATE SUBMITTED ~~6-13-74~~

DATE COMPLETED ~~6-17-74~~

Fold

☐ TAKEN FROM
☐ RECV'D. FROM
☐ FOUND AT

Re-examined at SF Atty's. office, Hartford, Conn.

EVIDENCE SUBMITTED FOR EXAMINATION

A) Ex #1 - photograph of partial latent print found on battery.
Ex #2 - photograph of partial latent print found on battery.
Ex #3 - photograph of partial latent print found on battery.
Ex #4 - photograph of partial latent print found on battery.
Ex #5 - photograph of lift of partial latent print found on battery.
Ex #6 - photograph of lift of partial latent print found on battery.
B) Five(5) sets of fingerprints and palm prints of the following: David G. Guillette; Robert M. Joost; William L. Marrapese; Nicholas D. Zinni; Edward Sitko

SERVICES REQUESTED

Examine and compare for possible identification

REPORT OF FINDINGS-

☐ POSITIVE IDENTIFICATION ☒ NEGATIVE IDENTIFICATION ☐ NEGATIVE FINDINGS ☐ NO CONCLUSION

☐ OTHER

On June 17, 1974, the above mentioned photographs of partial latent prints were re-examined by the undersigned with the following results:

1) Ex #1 and 5 were determined to be the same latent print and of no value for identification.
2) Ex #4 and 6 were determined to be the same latent print and upon re-examination it was determined that there was a sufficient number of characteristics appearing on the latent print to make an identification possible. It is also the opinion of the undersigned that the latent print in question is in fact a combination of ridges from two separate areas of the fingers and/or palms.
3) Ex #2 and 3 are of no value due to lack of sufficient detail.
4) All of the above partial latent prints were examined and compared with the known fingerprints and palm prints of suspects submitted, with negative results.

DISPOSITION OF EVIDENCE

☐ DESTROYED ☒ RETURNED ☒ ALL ☐ PARTIAL ☐ HELD ☐ PENDING TRIAL OR OTHER ACTION ☐ AWAITING PROPER DISPOSITION

[redacted] IDENTIFICATION UNIT NUMBER

Anthony F. Marcos

300

DATE OF REPORT 6-13-74

Anthony F. Marcos, Special Agent
DEPARTMENT OF THE TREASURY

ATF FORM 5-179 (REV. 12-68)

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Exhibit C

ADDRESS ALL DEPARTMENTAL COMMUNICATIONS TO
COMMISSIONER OF STATE POLICE

STATE BUREAU OF IDENTIFICATION

IN REPLY REFER TO
IDB-72-0165-C
STERLING

STATE OF CONNECTICUT
DEPARTMENT OF STATE POLICE
100 WASHINGTON STREET
HARTFORD, CONNECTICUT 06101

LATENT PRINT EXAMINATION

October 3, 1972

REQUESTED BY: Lt. Louis Leitkowski - CO of Troop 'D'.

REPORT TO: Same as above.

EVIDENCE SUBMITTED: Q-1 --- One Ray-O-Vac heavy duty battery, taped onto wood framing with electrical tape.

PROBLEM: Process Q-1 for latent prints.

FINDINGS: Three identifiable partial latents were processed from Q-1. Two partials are identifiable to the area of the friction ridge pattern on the extreme sides of the fingers, and one could be palm area.

COMMENTS: The latent partials will be kept on file for examination with the described friction ridge area when submitted when suspects are fingerprinted. It is requested that 'Major' printing be done, as the needed partials area is not normally printed when a suspect is being fingerprinted.

Sgt. James E. McDonald

SGT. JAMES E. MCDONALD
FINGERPRINT EXAMINER

Exhibit C

ADDRESS ALL OFFICIAL COMMUNICATIONS TO
COMMISSIONER OF STATE POLICE

STATE BUREAU OF IDENTIFICATION

IN REPLY REFER TO

IDB-72-0165-C
STERLING

STATE OF CONNECTICUT
DEPARTMENT OF STATE POLICE
100 WASHINGTON STREET
HARTFORD, CONNECTICUT 06101

LATENT PRINT EXAMINATION

October 13, 1972

REQUESTED BY: Lt. Louis Leitkowski - CO of Troop 'D'.

REPORT TO: Same as above.

EVIDENCE SUBMITTED:
K-1 --- Fingerprint and palm prints of Edward Sitko.
K-2 --- Fingerprint and palm prints of Nicholas David Zinni.
K-3 --- Fingerprint and palm prints of William Luigi Marrapese.
K-4 --- Fingerprint and palm prints of David George Guillette.
K-5 --- Fingerprint and palm prints of Robert M. Joost.

K-1 through K-5 were printed by ATF Special Agent Anthony L. Varco.

Lt. James E. McDonald

LIT. JAMES E. MCDONALD
FINGERPRINT EXAMINER

Exhibit D

THOMAS J. MESKILL
GOVERNOR

CLEVELAND B. FUESSENICH
COMMISSIONER

IDB-72-0165-C
STERLING

STATE OF CONNECTICUT
DEPARTMENT OF STATE POLICE
100 WASHINGTON STREET
HARTFORD, CONNECTICUT 06101

LATENT PRINT EXAMINATION

June 4, 1974

REQUESTED BY: Judge Murphy, Federal Court, Waterbury.

REPORT TO: Same as above, in court.

EVIDENCE SUBMITTED:
K-2 --- Friction ridge area from the sides of the fingers of Nicholas David Zinni.
K-3 --- Friction ridge area from the sides of the fingers of William Luigi Marrapese.

PROBLEM: Compare the latent partials of Q-1 with K-2 and K-3.

FINDINGS: The Q-1 latent partials are not identified as belonging to K-2 or K-3.

James E. McDonald
LT. JAMES E. MCDONALD
STATE POLICE CRIME LAB

Exhibit E

Considerations Regarding John Housand and John Daniels

The following monetary considerations were provided to Daniels and Housand for maintenance expenses :

Date:	Amount:	Person:
5-30-73	50.00	Housand
6-26-73	50.00	Housand
7-17-73	50.00	Housand
9-5-73	75.00	Housand
10-5-73	25.00	Housand
7-27-73	105.90	Daniels
9-5-73	75.00	Daniels
10-5-73	25.00	Daniels

The following considerations were given to Daniels by the undersigned for his cooperation:

1. That his cooperation would be brought to the attention of the New London County State Prosecutor for consideration in a criminal action then being pursued in State Court.

The following considerations were given to Housand by Special Agent Fowler and Watterson:

1. That the United States Attorney would be requested to to bring his cooperation to the attention of the North Carolina authorities with the intention of having his sentence reviewed by the appropriate authorities.

Q Did you ever tell anybody that if you cooperated in the LaPolla case, you'd be out of jail in two months?

A No, sir.

Q That if you testified in the LaPolla case, you'd be out of jail in two months?

Did you ever tell anybody that?

A No, sir.

Q Did you ever tell anybody the following: I have to make a big decision; if I fight my case they will put me away for the rest of my life; I have decided to testify; I want my freedom. Ever tell anybody that?

A No, sir.

Q No. And you are positive that you never told anybody that?

A I never made that statement. To no one.

Q Who did?

MR. COFFEY: Objection, your Honor.

THE COURT: Sustained as to who did.

Did he, that's the question.

BY MR. SANTOS:

Q And so the Government said that they'll go to bat foryou before the Parole Board, correct?

A That is correct.

Q All right. Did they promise you anything else?

A I was promised immunity from my involvement in the

A I am telling the truth.

Q Of course you are.

MR. COFFEY: Objection, your Honor.

I must object to Mr. Santos' off-the-cuff remarks, creating an inference on how he feels the witness is testifying.

THE COURT: It is inappropriate, counselor.

MR. SANTOS: Very well.

BY MR. SANTOS:

Q Now, Mr. Coffey promises you immunity from any prosecution in the conspiracy to murder Daniel LaPolla, correct?

A That is true.

Q And, of course, that was offered to you sometime in the summer of 1973?

A Sometime during that period of time, yes.

Q Yes. And there's no doubt in your mind that that was promised to you, is there?

A That is what I was told.

Q By Mr. Coffey, the prosecuting attorney told you that?

A The U. S. attorney, yes.

Q Mr. Paul Coffey?

A That is correct.

Q And do you recall appearing in this court in

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Daniel LaPolla matter, yes.

Q And when were you promised that?

A By Mr. Coffey.

Q When?

A That was early upon my arrival in Connecticut.

Q On what date, month, year?

A It was this year. Just exactly what date, somewhere in between my arrival and let's just say two or three months thereafter.

Q April, May, June or July, 1973?

A I cannot pinpoint it.

Q Well, you arrived when?

A I arrived in the State of Connecticut roughly about the 28th or 29th of April.

Q And you saw Mr. Coffey, right? When did you see Mr. Coffey?

A I saw Mr. Coffey approximately a month afterwards.

Q And he said, Mr. Housand, we're going to give you immunity from any prosecution in the LaPolla case for your testimony; correct?

A If I told the truth.

Q Only if you told the truth, right?

A If I told thetruth.

Q And, of course, you told them you were telling the truth?

November of 1973?

A I do.

Q Yes. And do you recall the defense attorneys asking you what promises were made to you?

A I recall that.

Q And did you tell us that you were granted immunity, immunity by Mr. Coffey, that he wouldn't prosecute you in connection with the LaPolla conspiracy?

Did you say that under oath?

A I don't recall the question being asked.

Q Well, we asked you -- was the question asked by defense counsel at that hearing what promises were made to you?

A You asked specifically what had the Government promised to do for me.

Q Right.

A And I related that they had promised to appear in my behalf down in North Carolina.

Q And we asked you were any other promises made?

A I don't recall asking that question.

Q You read the transcript, right?

A Yes, sir, I've read the transcript.

Q And you don't recall that question being asked in the transcript, correct?

A That transcript covers some 700 pages and to recall

one specific question in there is virtually impossible, Mr. Santos.

Q But you do recall that you did not say in November of 1973, in this courtroom, that you were promised immunity in the LaPolla conspiracy case, were you?

You never said that to anybody in this courtroom under oath?

A I don't recall whether I said it or not.

Q Now, Mr. Housand, were any other promises made to you besides these promises?

A This is the only thing that was ever told to me by Mr. Coffey.

Q Did anybody else promise you anything in addition to Mr. Coffey? Or any other Federal officers promise you anything besides Mr. Coffey?

A I was told by all the Federal officers that I talked with, that any promises of any type would have to come out of the U. S. ATtorney's office, Mr. Paul Coffey. That they did not have this kind of authority.

(Page 141 follows - no omission)

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Q Right. And clothing, I presume you have prison clothing that's given to you, right?

A Yes, sir, they furnish that.

Q And am I correct in assuming no rent is charged?

THE COURT: Well, counsel, let's not get to the ridiculous.

MR. WADE: All right.

A I don't know.

Q (By Mr. Wade) So my question is what have you spent the $400 on? What's the subsistence that you've needed to spend this money on?

A I've been held primarily in the Connecticut jail system over this period of time. In the Connecticut jail system, you can spend a total of $10 a week at their commissary to buy these items that I've stated: Cigarettes, toilet articles and other subsistence items that they're allowed to sell.

You can spend, say, a total of $10. And over a period of eight months, that works out to roughly about, say, $50 a month that I received from the Government. And --

Q Are you telling us, you, in fact, have spent it all, it's all gone?

MR. COFFEY: Objection, your Honor. That's irrelevant.

THE COURT: It is irrelevant.

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Exhibit C

25
605

We have covered it. He got that much money and this is what he spent it on.

Q All right. Now, you've testified that Mr. Coffey has promised to speak to the parole authorities in North Carolina for you. Has he, in fact, spoken to them yet, do you know?

A Mr. Coffey has stated that he has had conversations with them.

Q All right. And do you know, have you received any information from the North Carolina parole authorities about the effect of your willingness to co-operate here in Connecticut?

A No, sir.

(Page 606 follows - no omissions)

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BY MR. WADE:

Q Now, in addition to the monetary rewards you've been given and the clothing and stuff that's been bought for you and the promise of parole, what about the other charges that are against you?

A Excuse me, Mr. Wade. Let me inject something on thatpromise of parole. There is no way Mr. Coffey nor I or anyone else can tell those North Carolina authorities to grant me a parole. That's entirely at their discretion.

Q How about the other charges that you've got pending?

A The other charges?

Q Yes.

A I have been told by Mr. Coffey that I would not be prosecuted in the LaPolla case, which is now on trial.

Q Well, how about the stolen money order scheme that you've admitted tobe a participant in, what's happened to that one?

A I've never received any charges.

Q Has anybody told you that "Don't worry, John, even though you've admitted to participatingin a stolen money order scheme, we're not going to prosecute you on that one"?

A Mr. Wade, if I may --

Q The question, are you being prosecuted on that charge or not?

A Not that I know of.

Exhibit 6

Q All right. What about the robbery you committed when you left Rhode Island that you admitted to on this witness stand? Is anybody prosecuting you for that one?

MR. COFFEY: Objection, your Honor.

THE COURT: Sustained.

He didn't admit a robbery. He was arrested with the other defendants for possession of stolen burglary -- possession of burglary tools. Robbery wasn't accomplished.

MR. WADE: My recollection was -- I'll rephrase it.

BY MR. WADE:

Q When you left Rhode Island to head back down South last summer, you testified here last week you committed another crime, right?

MR. COFFEY: I'm going to object, your Honor. It's irrelevant.

THE COURT: Well, only if there is a promise that he won't be prosecuted for that. If that's one of his motives or inducements, then it is a legitimate question. I don't know whether it was or not.

MR. COFFEY: It should be brought out, however, your Honor, there's a difference between federal offenses and state offenses.

MR. WADE: He can cross examine.

THE COURT: If there is any promise by anybody, State or Federal, it's permissible.

BY MR. WADE:

Q Now, you testified a week ago you committed another crime, right, when you left Rhode Island?

A Yes, sir, I did.

Q And what did you do, rob somebody's house?

A Yes, sir.

Q All right. And have you been arrested for that charge?

A No, sir.

Q And has anybody in any way, either State or Federal, indicated to you whether or not you are going to be prosecuted for that charge?

A No, sir.

Q You've said that you've been promised that you won't be prosecuted in the LaPolla case, right?

A Yes, sir.

Q Were you ever charged in the LaPolla case?

A Not that I can recall.

Q When you say Mr. Coffey said you were going to be given immunity, did he have any sort of a form, a written formal form to fill out in reaching agreement with you that you would be granted full immunity from prosecution as a

EXCERPT FROM:

DIRECT EXAMINATION
BY MR. COFFEY

Q Well, when were you paroled?

A April of this year.

Q Now, has anything been promised to you in return for your cooperation and testimony by the Government?

A When I came to Connecticut --

MR. ZINNI: I pray Your Honor's judgment. May we have a yes or no answer to that?

THE COURT: Yes. Can you answer yes or no?

THE WITNESS: Yes.

BY MR. COFFEY:

Q All right. What have you been promised by the Government?

A I was told by the Government if I came up here and related the incidents truthfully that they would intercede with the North Carolina authorities on my behalf insofar as telling them of my cooperation with them and see if I could be granted a parole from the North Carolina authorities.

Q When was this promise made to you?

A This promise was made during last year.

Q 1973?

A 1973.

Q When did you first begin cooperating with the Federal Government?

A In April of 1973.

Q Was this promise made after that time?

A Yes, sir.

Q Were you promised anything else?

A I was promised immunity for my involvement in the Daniel LaPolla thing.

Q Were you promised immunity from any other offenses?

A And the -- anything -- any crime that I might have committed while I was in the Rhode Island area and the Connecticut area.

Q During what period of time, sir?

A From April, 1972 through June of 1972.

Q Now, in addition to that, were you or have you been given any money by the Federal Government?

A I have.

* * * * *

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U.S. DIST. COURT
HTFD. CONN.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
-vs-	:	Criminal No. H-524
	:	
DAVID GUILLETTE, ROBERT JOOST and NICHOLAS ZINNI	:	

RULING ON MOTION FOR A NEW TRIAL

David Guillette, Robert Joost, William Marrapese and Nicholas Zinni were convicted after jury trials, on an indictment charging in three separate counts: (1) an unlawful combination and conspiracy to deprive Daniel LaPolla of his civil rights, resulting in his death on September 29, 1972, a violation of 18 U.S.C. § 241; (2) attempting by force and violence to intimidate and impede a witness in a Court of the United States, in violation of 18 U.S.C. § 1503; and (3) using a dynamite bomb to commit a felony, namely, the injury by force of a witness in a Court of the United States, so as to impede, obstruct, and influence the administration of justice in violation of 18 U.S.C. § 1503 and in violation of 18 U.S.C. § 844(h)(i). The defendants Guillette and Joost were convicted after a jury trial before the undersigned at Hartford; while the latter two were convicted after a jury trial before Judge Murphy at Waterbury. The effective sentence

imposed in all four cases was life imprisonment. All defendants appealed their convictions, but on February 20, 1975, counsel for the defendant Marrapese filed a voluntary withdrawal of his pending appeal. He then proceeded to testify as a Government witness at the court hearing on the motion for a new trial, concerning his own participation in the purchase of the recantation of the prosecution's principal trial witness, informant-Housand. Marrapese openly admitted his own involvement in the conspiracy and testified that the other defendants, except Zinni, had actively participated in the LaPolla conspiracy, which resulted in the latter's death.

The motions of defendants Guillette and Joost for a new trial were denied on the day of sentencing, March 7, 1974; and similar motions by Marrapese and Zinni were denied on June 26, 1974, the date of their sentencing. On July 1 and July 19, 1974, respectively, the latter two defendants moved for a new trial based on newly discovered evidence and the prosecutor's suppression of material evidence. These motions were denied after hearing, on October 24, 1974; and their motion to submit further evidence concerning prosecutorial misconduct was also denied, on October 29, 1974, by Judge Murphy.

Case Background

Guillette and Joost filed a third motion for a new trial on October 3, 1974. They alleged that the Government

had failed to timely provide defendants' counsel with exculpatory evidence as required under Brady v. Maryland, 373 U.S. 83 (1963), together with Jencks Act material under 18 U.S.C. § 3500. They asserted that the principal prosecution witness, Housand, had perjured himself by not disclosing Government promises made to him; and by denying that he had previously received psychiatric evaluation and treatment; and finally that the Government had failed to timely produce relevant fingerprint evidence, which was exculpatory in nature as to them.[1/]

On November 13, 1974, the credibility of the Government's principal informant, John A. Housand, became highly questionable, when he appeared at the office of the United States Attorney in New Haven in the company of Attorneys Andrew A. Bucci and John A. O'Neill, Jr., former defense attorneys in the case, to recant the substance of his trial testimony. Informant Housand proceeded to dictate, on tape, an unsworn statement and to respond to questions put to him by the United States Attorney.[2/] He conceded that he himself had been an active participant in the original conspiracy to kill LaPolla, for which crime he had received immunity from prosecution by the Government. He not only denied the truthfulness of his own trial testimony, but affirmatively accused the Special United States Trial Prosecutor at Hartford, the Chief Attorney of the New England Criminal Strike Force, at Boston, another assigned

Assistant United States Attorney, several special Treasury investigating agents, and certain United States Marshals, of knowingly conspiring to suppress the true facts by falsely manufacturing evidence against the defendants and by aiding in the giving of false evidentiary information in court.

Housand represented that from the time he first testified before the Grand Jury that indicted these defendants, and throughout both trials, he had been led and rehearsed in the false testimony by Government attorneys and agents. He claimed that the four convicted defendants (including Marrapese) had been set up and framed. He stated that the key conspiratorial meeting at Carter's Jewelry Store on May 8, 1972, to which he had previously testified and concerning which he was subject to extensive cross-examination, had never occurred. He related how two ATF agents had represented at his first interview with them while he was an inmate at the North Carolina prison, that the Government would pay him $5,000 for his cooperation and testimony. He claimed that these same agents insisted, however, that no mention of this monetary remmeration should be divulged at trial. He complained that the Government has since refused to pay him the promised sum and that he stood ready and willing to testify in Court, that the Government representatives had suborned perjury, whenever a hearing on the motion for a new trial would be scheduled.

After the taped recantation, Housand was subpoenaed to

appear before a Grand Jury on December 3, 1974, for the purpose

of testifying under oath, concerning the taped testimony and being subjected to further examination. At the time of his Grand Jury appearance, he was being detained under bond as a material witness and was represented by court-appointed counsel. At his first appearance before the Grand Jury, he exercised his fifth amendment rights[3/] and refused to testify. On December 6, 1974, at his own request he again appeared before the Grand Jury and testified in substance to the recantation of his trial testimony. He reiterated his accusation of suborning perjury against the Government prosecutors and their investigating agents. After interrogating several witnesses, the Grand Jury indicted both Housand and Attorney Bucci, together with several other named defendants, in Criminal Case No. H 74-185, charging them with conspiring to obstruct justice and suborning perjury. This original indictment was later dismissed upon the Government's own motion on March 21, 1975; and it was superseded by a new indictment, H 75-39, wherein only the informant Housand and Attorney Bucci were named as co-defendants.

On March 24, 1975, Housand wrote to the Court,(with a copy to his counsel) requesting a severance in Criminal No. H 75-185, giving as his reason that much of his testimony would be against the other defendants named in the indictment, excluding his wife. An attached accompanying letter was addressed to United States Senator Talmadge of Georgia, to whom

to the events discussed with informant Housand. They were

Housand stated, ". . . interested parties located your writer and forced him to return to Connecticut, where your writer recanted previous testimony." These flagrantly contradictory positions taken by Government-informant Housand, cause this Court to look with searching and guarded scrutiny concerning his truthfulness and what weight, if any, should be given his trial testimony against these defendants, who stand convicted.

When Housand appeared at the court hearing scheduled for presentation of evidence on the new trial motion for the defendants, Guillette, Joost, and Zinni, Housand's counsel moved that the Court order a mental examination of Housand, before his counsel should be required to advise him on whether or not he should testify. The motion was granted and Dr. John Donnelly, the Psychiatrist-in-Chief at The Institute for Living in Hartford, was appointed to conduct this psychiatric examination. The doctor spent 30 hours reading reports, records and the trial testimony of Housand; and he interviewed him for a total of approximately 8 hours on 4 different occasions for purposes of psychiatric evaluation, before submitting a written report.[4/]

Dr. Donnelly's findings disclosed that Housand was not psychotic; that he understood the nature of the proceedings in his present legal situation; and was fully able to assist counsel in his own defense. (Dr. Donnelly Tr. 52, 53). He found that Housand had a personality disorder with an anti-social personality and that he had a capacity for the

manipulation of people; and a faculty of being evasive and misleading, without it being apparent. Dr. Donnelly concurred in that part of the opinion expressed in a report by Dr. Henderson (former Chief of Staff of the Lutheran Medical Center, in Omaha, Nebraska, who had treated Housand in July, 1965) that Housand's ability to lie was fantastic. (Dr. Donnelly Tr. 70). Dr. Donnelly also testified that he had questioned himself a long time on the issue of whether Housand could be classified as a "pathological liar." His final decision was in the negative, because by definition a pathological liar is one who tells falsehoods for the pleasure of it and usually cannot remember later what he has said. However, the Doctor did agree that Housand had a fantastic ability to lie. (Dr. Donnelly Tr. 94) (Dr. Henderson Tr. 15). Dr. Donnelly found Housand not mentally ill, to the extent of having incapacitating emotional symptoms, such as psychosis or neurosis; however, he did find that his personality structure, from a mental health point of view, was pathological. (Dr. Donnelly Tr. 87).

At the Noble Met hearing, which was conducted outside the presence of the jury and limited to the issue of whether evidence concerning the commission of a prior similar act, the using of an explosive device, should be admissible as evidence against the defendants Joost and Guillette, Housand was specifically asked whether or not he had ever been

previously examined or treated by a psychiatrist. He responded unequivocally that he had not. He also denied that he had ever applied for psychiatric help, either while in the military or in prison. (Tr. 309). His only reference to such contact was as it related to classification procedures when being admitted or processed in prison.

Throughout both trials, Housand's credibility was constantly under attack. His testimony was crucial in establishing the conspiratorial meeting on May 8, 1972, at Carter's Jewelry Store in Cranston, Rhode Island, which involved the four defendants as active participants. Without that meeting, it would have been difficult, if not impossible, to prove that all four had agreed to actively participate in carrying out the plan to do away with LaPolla, as set out in Count 1 of the indictment. It became clear that the reliability of this Government-informant, as the prosecution's principal witness, could in the last analysis become finally determinative of the guilt or innocence of these defendants.

Thus it was of critical importance during both trials that Housand flatly denied that he had ever been examined or treated by a psychiatrist, when in fact his actual medical and psychiatric history disclosed objective facts to the contrary.[5/] In fact, it became an effective method of closing the door to further cross-examination by defense counsel in

the area of his prior mental illness and his potential as a perjurer and embellisher of the truth.

The records disclosed that Housand had been ordered hospitalized at the United States Naval Hospital for a medical-psychiatric evaluation at Guam, in July, 1954. The purpose was to determine his mental responsibility after he had been charged with larceny in a military court martial proceeding. His medical history as contained in these records, disclosed two nervous breakdowns during the two previous years and a record of his experiencing fainting spells, with periods of loss of memory under stress. He claimed to have experienced these symptoms since having been accidentally hit on the head with an axe as a child. The final diagnosis was "emotional instability" (hysterical anxiety).

His medical history also disclosed that Housand had psychiatric evaluation at the Psychiatric Clinic, Lachland Air Force Base in Texas, on October 30, 1956. The findings were that he had a personality disorder, namely, emotional instability reaction, manifested by impulsive acts, emotional lability and poorly controlled hostility with anxiety and guilt feelings.

During the cross-examination of Housand at the Noble Met hearing, Government counsel was reminded that he had a continuing duty under court order throughout the trial, to

divulge any reports the Government had or knew about concerning the treatment for psychiatric problems of any Government witness. At that time the prosecutor denied having any such information. (Tr. 310). However, during the course of the trial, medical and psychiatric reports of this nature did come into the possession of the Governor prosecutor, which were part of the military court martial records.[6] From that time on, although he had such material information in his file, through a claimed oversight, he failed to discover and disclose them to defense counsel or to the Court. He explained at the new trial hearing, that he had not in fact read through all of this supplemental data, but was primarily interested in reviewing the criminal record of Housand's convictions.[7]

A further disclosure was filed with the Court by the Government which came to the Government's knowledge after the hearings on the defendants' third motion for a new trial; and it became Court Exhibit 18 by stipulation with defense counsel. No claim was made that anyone connected with the Government had any prior knowledge of the report's existence. It reveals a psychiatric examination on September 14, 1965, by a Dr. Edward T. Beitenman, of Omaha, Nebraska.

The report revealed that informant Housand, who had just been discharged as a patient at the Lutheran Medical Center on August 6, 1965, was interviewed at the County Jail

at Omaha, Nebraska, because of his own insistence that he needed psychiatric treatment. It revealed further some of the contradictions of his mental makeup.[8/] He acknowledged to Dr. Beitenman his previous treatment by Dr. Henderson, whom he stated, knew what a disturbed person he was. Housand acknowledged that Dr. Henderson had described him as a psychopathic liar, but assured Dr. Beitenman, that although he had lied to Dr. Henderson, he would not lie to him.

Dr. Beitenman recited in summary form the history given to him by Housand, and made the following findings of his impression:

> "Mr. Housand does represent a definite personality trait disturbance. His diagnosis is an emotionally unstable personality. When placed under stress, his judgement would be poor and his relationships with other people are continuously fraught with fluctuating emotional attitudes, because of strong and poorly controlled hostility, guilt and anxiety. He has a tremendous need to be noticed by people, and often times will become overly dramatic. Sometimes, this type of person resorts to suicidal threats and gestures, which fortunately are in many cases as fleeting as their various moods. He reports that he had intensive psychiatric counselling while in prison, and I doubt whether any long-term psychiatric program would help him."

The Court finds that informant Housand's trial testimony, to the effect that he had never asked for or received psychiatric evaluation or treatment was completely false. The factual information contained in the military records, the

Lutheran Hospital records and Dr. Beitenman's report establish the contrary facts with objective certainty. Timely knowledge by defense counsel that the Government's informant and chief witness was described in available psychiatric reports as a compulsive liar is a fact which might well have been crucial to defense counsels' effective cross-examination of Housand.

Perjury & Non-Disclosure of Psychiatric Information

When Housand testified before the Grand Jury on December 6, 1974, he admitted for the first time, the fact that his mental health condition had been examined and evaluated by the military at the United States Naval Hospital on Guam, in 1954, and also that in 1965, he had been a private patient in a psychiatric hospital in Omaha, Nebraska. He represented that he had advised the Government prosecutor of these facts and the latter allegedly said, "Well, we can't very well give this to the defense because they would have very -- it would be a good thing to discredit you."[9/] All the Government prosecution agents testified unequivocally to the contrary, that such a conversation never occurred; and this Court finds that such an alleged discussion never happened.

The Lutheran Medical Center Report[10/] disclosed Housand's

psychological evaluation and treatment as a psychiatric patient during the 27-day hospitalization period from July 10, 1965 through August 6, 1965. Dr. Henderson's hospital memoranda[11/] disclosed that the patient came to him wanting help and he found after examination that Housand had a personality trait disturbance and was emotionally unstable. Dr. Henderson noted that Housand was a "story teller" and that he had a fantastic ability to lie. (Dr. Henderson Tr. 13). He described him as a man who "could get grandiose ideas; he would build situations . . . when that sort of thing collapses, he doesn't learn from it; he sets it up again . . . ." (Dr. Henderson Tr. 27). All of this is consistent with his military history record, as disclosed in defendants' Exhibit 5Z, sub-paragraph 5 (d), page 6 of the Review of the Staff Judge Advocate, where it said, "His ability cannot be effectively utilized by further military service because he is an habitual prevaricator."

The pscyhologist's report, of Housand, prepared while he was hospitalized and being evaluated at the Lutheran Medical Center, stated that underneath, Housand may well be a "schizophrenic." When he was discharged as a patient, it was noted that he was "not improved." (Dr. Henderson Tr. 13-17). The Court finds that Housand knew during his stay in that hospital he was undergoing psychiatric treatment and he was fully aware, that as a patient, he was receiving prescribed

medication for his condition. The doctor testified that during his hospital stay, his mood did improve, but not his story telling.

The Court finds that all of his psychiatric information was denied to the defense primarily by reason of Housand's perjured testimony, wherein he unequivocally denied that he had ever previously been examined or treated by a psychiatrist. Furthermore, the trial prosecutor testified that after Housand's military records with their attached medical-psychiatric data had come into his possession, while the trial was in progress, his attention was primarily centered on Housand's criminal convictions and he had no recollection of having seen the psychiatric data or considered its materiality. He conceded that defendants' Exhibits 1 through 6 were never disclosed to defense counsel and neither was defendants' Exhibit 23Z, except the face-sheet. (Coffey Tr. 90-93, Feb. 14, 1975).

12/

Failure of Government
to Disclose Brady Material

The defendants' Exhibit 23Z disclosed on pages 24-28, that Housand pleaded guilty before a special court martial on June 4, 1956, to an information with three charges; and the third charge recited ten separate specifications of making and uttering fraudulent checks. On each one of the copies

of these checks, the name of the maker appeared thereon as "John L. Housand." The prosecutor conceded that this data was in his file during the trial, at a time when the following testimony was educed:

> "Question: How about John Levon Housand? Did you ever use that?
>
> "Answer: We have been on that before. I don't recall using that 'L.' I don't.
>
> "Question: Is it a mistake?
>
> "Answer: I never used it."

(Coffey Tr. 211, Feb. 18, 1975).

At a prior occasion, during the Noble Met proceedings, the following colloquy had occurred:

> "Question: Have you ever been arrested or convicted under any name other than Stephen Longval, John Joseph Howard, or John L. Housand?
>
> "Mr. Coffey: I object to the last one, your Honor. The witness testified he had never been convicted under the name of John L. Housand. Mr. Santos asked him about his rap sheet, and whether he ever used that name. And the witness said no.
>
> "The Court: What was the name, Counselor.
>
> "Mr. Coffey: John L. Housand. As I recall Mr. Santos' inquiry on Friday, he asked him whether John L. Housand was one of the names he was known as, and he said no."

(Coffey Tr. 220-221, Feb. 18, 1975).

Had the Government counsel timely revealed to defense counsel,[13] as he was under a duty to do, the latter could have used this documentary evidence to establish objectively before the jury, the witness' deliberate lack of truthfulness in other essential matters. This opportunity might also have assisted defense counsel in establishing a stepping stone in the potentially persuasive argument, "falsus in unus falsus in omnibus." Had the Court been made aware of Housand's background of mental illness, it might well have ordered its own psychiatric examination of him by a court-appointed doctor.[14] Instead, the Government had this information in its file and through oversight did not disclose it, even to the Court.

Housand's Letters as
Brady Material

The defense counsel have also alleged broad claims, that several of the letters written by informant-Housand to the prosecutor and to the ATF agents prior to the first trial, should have been disclosed to them as "Brady Material" or at least filed with the Court "in camera," for an evaluation and ruling. These letters, including some which were written after the Hartford trial, but before the Waterbury trial, are presently defendants' exhibits or court exhibits[15] and have

been subject to the Court's review. The Court finds that the letter dated March 22, 1974 [16/] sent by Housand to ATF Agent Petrella should have been considered by the Government to have been discoverable. The relevant part of that letter read:

> "Sal: . . . . I fully intend to fulfill my obligation insofar as testifying, but you known there is a 'way' of testifying, and truly testifying."

The significance of this correspondence was that Housand suggested that the truthfulness of his testimony in the courtroom was not beyond his manipulation and embellishment. The credibility of this informant was crucial to the Government's proof that a conspiracy existed. The contents of that letter conceivably could have led a capable defense attorney to develop Housand's personal motivations and demonstrate that they were designed to further his own personal interests. Such probing might conceivably have destroyed the jury's belief in Housand's other testimony. Since this letter was written after the Guillette-Joost trial, but before the Zinni trial, potentially it could only have infected the latter trial. The letter was in the same category of damaging evidence as Defendants' Exhibit 30Z, which was voluntarily disclosed by the prosecutor prior to the first trial. There were several other letters written in the Spring of 1974, which alluded to Housand's request for more Government maintenance money.

These letters should have been filed with the Court as potential "Brady Material," to enable the Court to decide on their disclosure. However, the Court finds that no material harm flowed from this omission, in light of the Government's ultimate disclosure to defense counsel of such maintenance sums at the Waterbury trial. The Court finds that all others of such letters, including the Christmas card to Agent Petrella, were not discoverable and none of the defendants experienced any harm from their non-disclosure.

Failure to Disclose
Government Promises

The Court finds that the defense was not harmfully prejudiced by the prosecutor's failure to timely disclose the promises alleged to have been made to the informant Housand. Some of this information was originally disclosed orally and then supplemented in writing. However, the check cashing scheme and the breaking and entering of the home in Rhode Island were never revealed until the Noble Met hearing during the trial. This unusual circumstance gave defense counsel an adequate opportunity to pursue the subject on cross-examination in the presence of the jury. (Coffey Tr. 37-40, Oct. 3, 1974). The Court does not condone this dilatory procedure; however, in this instance it did not in fact materially harm the defense.

The Court further finds that the Government did not make any specific affirmative promises of immunity to the informant Housand which were concealed from the defense. (Coffey Tr. 22-35, Oct. 3, 1974). The prosecutor conceded, however, that it was implicit during the Government's pre-trial questioning of Housand, it was not the Government's intention to prosecute him for those crimes which he voluntarily revealed, as a result of his giving a history of his association with the defendants and thereby cooperating with the Government. It would have been much better practice, however, for the Government to have disclosed in writing to defense counsel this "implicit understanding" even in the absence of the Government's making any specific promise of immunity. (Coffey Tr. 66, Oct. 3, 1974). It seems apparent in this case, that due to the physical proximity of the Public Defender's Office and the Prosecutor's Office on the second floor of this building, the mutually relied upon discovery procedures were too informal.

Notes of ATF Agents

The Court finds that the random memorandum notes taken by ATF Agents Weronik and Petrella at the Brooklyn Jail interview on September 18, 1973, were but summary observations as

to the events discussed with informant Housand. They were not the adopted words and thoughts of Housand, but rather those of the agents. They were clearly not § 3500 material, which required disclosure. See, Palermo v. United States, 360 U.S. 343, 350-351 (1959).

Fingerprints

In light of this Court's ordering a new trial on other sufficient grounds as hereinbefore stated, and considering Judge Murphy's findings in respects to the issues raised, no constructive purpose could be serve by this Court's treating the subject of fingerprints further.

Housand's Recantation Statement

After reviewing the totality of the record, the Court finds that there is no credible evidence to support informant Housand's accusation that Government prosecutors and agents conspired to frame and convict these defendants by unlawful means. The Government made a bona fide effort to solve the commission of this heinous, cowardly crime against society; and except for the errors of judgment as hereinbefore stated, the Court finds no unlawful prosecutorial conduct.

Discussion of the Law

The motions for a new trial were filed pursuant to Rule 33, Fed. R. Crim. P. The rule provides in relevant part:

> "The court on motion of a defendant may grant a new trial to him if required in the interest of justice. . . . A motion for a new trial based on the ground of newly discovered evidence may be made only before or within two years after final judgment, but if an appeal is pending the court may grant the motion only on remand of the case."

Since appeals were pending in the cases of the three defendants, Guillette, Joost, and Zinni, after determining that a new trial was required in the interest of justice, this Court sua sponte moved that the case be remanded from the Second Circuit Court of Appeals so that a new trial could be provided for said defendants. The appellate court responded by remanding said case on April 18, 1975, and the matter is now before this Court for appropriate action.

> "Rule 33 of the Federal Rules of Criminal Procedure provides that within two years after final judgment the defendant may move for a new trial based on the ground of newly discovered evidence in the district court. If the case is on appeal, the district court may certify that if the case is remanded, a new trial will be granted, and the appellate court will generally comply by remanding the case. Rule 33, supra; United States v. Minkoff, 181 F.2d 538 (2 Cir. 1950); see also United States v. Smith, 331 F.2d 145 (6 Cir. 1964). . . ." United States v. Comulada, 340 F.2d 449, 452 (2d Cir. 1965).

Also see, United States v. Frame, 454 F.2d 1136, 1138 (9th

Cir. 1972); and United States v. Shelton, 459 F.2d 1005, 1006 (9th Cir. 1972).

It is now a commonly accepted principle of law, that the constitutional requirement of due process is not satisfied, where perjured testimony of a witness would have been reasonably likely to have affected the jury's judgment in determining the credibility of a material witness. Particularly is this true, where the testimony of that witness was crucial in establishing proof of the elements of the crime charged and the overall circumstances of the testimony offered, bore directly on the guilt or innocence of the commission of the crime itself or could have reduced the penalty for the crime.

> "The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend. . . .
>
> "'It is of no consequence that the falsehood bore upon the witness' credibility rather than directly upon defendant's guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth. . . .'" Napue v. Illinois, 360 U.S. 264, 269-270 (1959).

Also see, Pyle v. Kansas, 317 U.S. 212 (1942).

In this case, there were three separate levels of conspiratorial conduct, in which the trial jury could have

found these defendants possibly involved; however, it found each of them guilty of all three. The first count alleged a conspiracy, which resulted in a Government witness' violent death; and the statute covering that office authorized imprisonment up to a life term. The second count involved a simple conspiracy to influence, intimidate and impede a witness, which statute carried only a 5-year penalty. The third count alleged a conspiracy where an explosive was used to influence and injure a witness by force, and this carried a 10-year penalty. The degree of guilt or innocence of each one of these defendants might well depend upon each defendant's individual affirmative conduct by acts, by agreement, or by assent to pay another to commit such acts. It is, of course, conceivable that a defendant might willingly participate in frightening or threatening a witness and yet not have knowledge of the existence of a conspriacy to cause the death of the victim by the use of an explosive. Thus, in this kind of case any shading of informant Housand's testimony by filling in facts, could have essentially affected the jury's ultimate decision of guilt, as it related to each defendant.

If the trial jury had known that Housand had a psychiatric history of deliberately fabricating the truth by using fantastic falsehoods and being a compulsive liar, such facts would likely have had an effect on the ultimate judgment of

the jury. Housand's deliberate false denial of past psychiatric examination, evaluation, and treatment, effectively foreclosed defense counsels' inquiry into this sensitive area. Furthermore, the negligent failure on the part of the Government to more carefully scrutinize the military information relating to the informant's past psychiatric history already in its possession, prejudiced the defendants' right to a full disclosure of this information in accordance with the Court's order. The undisclosed evidence was of such a nature that it could have assisted defense counsel in presenting their cases in such a manner, that culpability could have been lessened and reasonable doubt created in the minds of the jurors. The Court finds that there is a reasonable likelihood that the undisclosed information could have materially affected the degree of legal guilt as to the conduct of each defendant; and that it could conceivably have affected the overall outcome of the trial. In making this finding, the Court does not find that there was any willful or deliberate bad faith on the part of the Government prosecutor.

> "A new trial is required if 'the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury. . . .'" Giglio v. United States, 405 U.S. 150, 154 (1972).

The federal rule requires that relief in the form of a new

trial should be granted only under circumstances compelling such action to achieve justice. Under the circumstances disclosed here, this Court is required to set aside the convictions of Guillette, Joost, and Zinni and order a new trial for all three.

> " . . . [T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." Brady v. Maryland, 373 U.S. 83, 87 (1963).

Also see, Napue v. Illinois, 360 U.S. 264 (1958); United States v. Baldi, 195 F.2d 815 (3d Cir. 1952); and United States v. Keogh, 391 F.2d 138 (2d Cir. 1968).

As Judge Friendly so aptly described the situation in a comparable factual circumstance in United States v. Miller, 411 F.2d 825, 832 (2d Cir. 1969):

> "The test, however, is not how the newly discovered evidence concerning the hypnosis would affect the trial judge or ourselves but whether, with the Government's case against Miller already subject to serious attack, there was a significant chance that this added item, developed by skilled counsel as it would have been, could have induced a reasonable doubt in the minds of enough jurors to avoid a conviction." (footnote omitted).

The truthfulness of informant Housand was continually under attack throughout both trials. In several non-crucial matters his recollection of factual events differed with the testimony of certain officers in the Lincoln, Rhode Island

Police Department and two of the agents of the Providence Office of the FBI. In several other particulars, his testimony differed with that of proven credible evidence. In some respects, such as the story of Housand's being kidnapped and held at gunpoint against his will, while he spent several hours writing out a false and defamatory statement[17/] against the Lincoln Police Department, at a time when his captors had gone to bed; this testimony approached the fantastic. The question arises, would the jury have believed him in these particulars or would they have believed any of his testimony, had they been advised of the history of his psychiatric problems and the medical-psychiatric evaluation to the effect that he was a person who had a fantastic ability to lie. Was part of his testimony fantasy or was it the whole truth?

Experience teaches trial counsel, that one of the most dangerous witness is one who has no hesitancy to "fill in" crucial testimony or to tell half-truths. A supplement to that theorem, however, teaches that the testimony of such a witness can be totally destroyed where adequate background information concerning the witness has been developed and a thorough preparation of the facts carried out. It is for just such a purpose that Jencks Act and Brady material are required by statute and court rule to be disclosed so that defense counsel may not be overtaken by half-truths.

7. A neighborhood check of Himrod Street or Himrod Street is being done

The ten checks, on which informant Housand had pled guilty at the military court martial under the name of John L. Housand which the Government had in its file and failed to disclose, also constituted discoverable Brady material. Housand had repeatedly denied that he had used the "L" or the middle name "Levon" when questioned by defense counsel. The fact that the Government face-sheet did disclose the middle initial, did not compensate for Housand's insistence that the record was in error. The Xerox copy of these checks in the prosecutor's file, constituted the best available contradictory evidence. Through negligent oversight, they were not disclosed by the Government prosecutor.

> "A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice, even though, as in the present case, his action is not 'the result of guile,'. . . ." Brady v. Maryland, 373 U.S. 83, 87-88 (1963).

Also see: Giles v. State, 229 Md. 370, 183 A.2d 359, appeal dismissed, 372 U.S. 767(1962); Grant v. Alldredge, 498 F.2d 376 (2d Cir. 1974); United States v. Pfingst, 490 F.2d 262, 277 (2d Cir. 1973).

Under similar circumstances, the Second Circuit Court of Appeals in United States v. Badalamente and Yagid, ____ F.2d ____ (2d Cir. 1974), slip op. 5899 (November 21, 1974)

reversed a conviction, where the Government had suppressed exculpatory material, which had bearing upon the credibility of a Government witness. There the Court said:

> ". . . [W]e think that as the trial continued af- Yagid testified—where his testimony made the credibility of Allen crucial to the determination of Yagid's guilt or innocence—the nonproduction of the Allen letter to the trial judge and the Allen letters to other public officials was a violation of the rule in Brady v. Maryland, 373 U.S. 83, 87 (1963), that 'the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.
>
> ". . . [T]he signifance of the letters was evident on their face, and their importance as tools for impeachment of a crucial witness was inescapable."

The Government informant, Housand, was portrayed before the jury by defense counsel, as a career forger and a recidivist criminal with a substantial record. However, had the objective evidence of the ten checks been made available to defense counsel, they might have used them to establish a visible benchmark, against which the true measure in the courtroom of the witness' false testimony could be gauged. A jury usually resents not being told the truth under such circumstances where the factual evidence is clear cut; and they might well have discredited Housand in other essential particulars:

> "Appellant's counsel would probably have sought to make this letter the 'capstone' of his attack on Lipsky's credibility, cf. United States v. Miller, . . . and argued that it revealed a frantic—

> even mentally disturbed—person who was ready to tell any lie to anyone in order to save himself from a murder conviction in the state court. Denial of the opportunity to use such forceful impeaching material bearing on the credibility of the government's key witness mandates a new trial." United States v. Pacelli, 491 F.2d 1108, 1119 (2d Cir. 1974) (footnote omitted).

Defendant Zinni

At the original trials of the defendants Guillette and Joost, the defendant Marrapese was called by the defense as a witness, out of the presence of the jury. He invoked his fifth amendment rights and refused to testify. At the Marrapese and Zinni trial, he was a co-defendant on trial and was not called to testify. However, on February 19, 1975, at the hearing on the motion for a new trial, Marrapese, while represented by counsel, elected to withdraw his pending appeal of conviction in the Second Circuit Court of Appeals and his motion for a new trial in this Court, and proceeded to testify for the Government. He then became the source of new factual information, not otherwise previously available.

It is settled law in this Circuit, that before a sentence may be vacated and a new trial ordered on the grounds of newly discovered evidence, the following elements must be proved:

> (1) the evidence must in fact be newly discovered evidence;

(2) the petitioner must not have lacked diligence in obtaining such evidence prior to the conclusion of the trial;

(3) it is not merely cumulative or impeaching;

(4) it is material to the issues; and

(5) it is of such a nature that upon a new trial, it would be likely to produce an acquittal.

United States v. On Lee, 201 F.2d 722, 723, f3 (2d Cir.) cert. denied, 345 U.S. 936 (1953); Tropiano v. United States, 323 F.Supp. 964 (D. Conn. 1971); Cruz v. United States, No. 15178 (D. Conn. 1972).

Marrapese, an associate of the other defendants, openly admitted that he had been engaged in a career of crime over a number of years. He stated that he had been for several years a shop lifter but more recently he had become a "fence," who primarily engaged in the business of buying and selling stolen precious metals, jewels and jewelry. The enormity of his criminal business was disclosed, when he said he grossed "probably two and a half million dollars a year."

He testified to the participation of the defendants Guillette and Joost in the Westerly, Rhode Island armory theft of the M-16 rifles and the transportation of the guns by all four defendants to LaPolla's home in Oneco, Connecticut. He described the events leading up to the alleged May 8, 1972 conspiratorial meeting at Carter's Jewelry Store in

Cranston, Rhode Island. However, his version of the meeting placed the defendant Zinni in the connecting office-room between Carter's and American Gold Buyers, Inc., during the conspiratorial discussion. He testified that Zinni continued to vacuum the floor for pieces of glass from the shattered display cases, that had been burglarized a few days previous. He claimed that defendant Zinni did not take an active part in the conspiratorial discussion. However, there is some question in the testimony concerning whether or not he later acquiesced, while in the car with Marrapese on the way to the Providence Superior Court. If Marrapese is to be believed, his testimony could well have material bearing on the degree of guilt applicable to defendant Zinni.

Marrapese admitted his own involvement in the conspiratorial meeting and some of his own overt conduct which was designed to accomplish its purpose. He stated that on September 29, 1972, the day of the bomb explosion and killing, he had just left Attorney Bucci's office, when he met the defendant Guillette and a friend named Sitko. Marrapese testified that Guillette said, "I just left a package for your buddy up there." Marrapese said while he didn't know what it meant at the time, he understood that he was referring to Daniel LaPolla and "up there" meant Oneco, Connecticut.

Marrapese testified to a conversation between himself, Guillette and Sitko in late April or early May, 1973, while

the three were having lunch together. Marrapese explained that on this occasion, he was reading in the newspaper about letter-bombs, and expressed the observation that he was curious as to how they were made. Sitko spoke up and said, "That's the way we should have killed that LaPolla;" and proceeded to explain what a hard time he had had getting the storm window off the rear of LaPolla's home.

Marrapese then told about Guillette's entering the building, while he and "Red" went out front as look-outs. Guillette told them that he climbed through the window and hung up either six or eight sticks of dynamite from a coat hanger running alongside the door. Marrapese also told how Guillette said he had a tough time driving a nail into the floor, while using a pair of pliers. The evidence at trial disclosed the wooden base for the switch and explosive device was nailed to the floor. Marrapese stated that Guillette explained that "they had worn surgeon's gloves, and that they had gotten rid of everything." (Marrapese Tr. 172-173).

The Court finds that Marrapese's testimony, if believed by a jury, could be exculpatory in degree, as to both Zinni and Joost. In either case, it could likely affect the severity of the punishment to be imposed, if the totality of the evidence failed to support a finding of guilt on the indictment's first or third count.

". . . [I]t is clear that the trial judge, in deciding a motion for a new trial on the basis of new evidence, has broad discretion in deciding whether the new evidence is credible. United States v. Johnson, 327 U.S. 106, 111-112, 66 S.Ct. 464, 90 L.Ed. 562 (1946); Jones v. United States, 279 F.2d 433 (4 Cir.), cert. denied sub nom. Princeler v. United States, 364 U.S. 893, 81 S.Ct. 226, 5 L.Ed. 2d 190 (1960). . . ." United States v. Maddox, 444 F.2d 148, 152 (2d Cir. 1971).

The Court is satisfied that the newly discovered evidence of the witness and co-conspirator Marrapese would be likely to produce a different result, as to the defendants Zinni and Joost; and for the overall reasons hereinbefore stated, the Court is of the opinion that basic justice requires a new trial as to all three defendants, Guillette, Joost and Zinni. The defendants' motions for a new trial are therefore granted, and it is so ordered.

Dated at Hartford, Connecticut, this 18th day of April, 1975.

T. Emmet Clarie
Chief Judge

THE COURT: Would you recognize his picture if you saw it?

FOOTNOTES

1/ On October 24, 1972, the Court ruled and so ordered that "the Government was under a continuing duty to timely produce Brady material throughout the trial."

2/ Defendants' Exhibit 21Z.

3/ Defendants' Exhibit 20Z.

4/ Government Exhibit 11.

5/ Defendants' Exhibit 23Z; Tr. 208, February 28, 1975).

6/ Defendants' Exhibit 23Z, pp. 22-33; Coffey Tr. 37, January 13, 1975.

7/ Coffey Tr. 57-58, January 13, 1975).

8/ Court Exhibit 18.

9/ Defendants' Exhibit 20, Grand Jury Tr. 855.

10/ Defendants' Exhibit 22Z.

11/ Ibid.

12/ Defendants' Exhibits 1Z-6Z, 22Z and 23Z.

13/ Defendants' Exhibit 23Z, pp. 24-28.

14/ Defendants' Exhibit 16, p. 67.

15/ Defendants' Exhibits 35Z, 40Z, 27Z, 33Z, 41Z, 42Z.

16/ Defendants' Exhibit 35Z.

17/ ". . . [I]f I gave these people a statement, indicating in the statement the things they wanted to appear, that I would be released unharmed, and be allowed to go on may way.

"On the other hand, if I did not co-operate with them, I would probably end up in Lincoln Woods." Housand Tr. 696, November 8, 1973.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
V.	:	CRIMINAL NO. H-524
	:	
DAVID GUILLETTE, ET AL	:	

MOTION FOR IN CAMERA INVESTIGATION CONCERNING INFORMATION SUPPLIED TO LAW ENFORCEMENT PERSONNEL

Pursuant to the recent decision in this Circuit of United States v. Soles (Slip. Op. 2 Cir. July 6, 1973) the defendant, David Guillette, through his attorney, Hubert J. Santos, respectfully requests the Court to conduct an in camera investigation into the probable testimony of the informant referred to in Exhibit "A", attached hereto, and said, Hubert J. Santos, being duly sworn deposes and says:

1. On the first day of trial the Government turned over to the defense Brady material attached hereto as "Exhibit A".

2. Upon receipt of same the undersigned moved on behalf of his client for the name of the informant who supplied the information contained in Exhibit A. The Court denied the motion.

3. The Court of Appeals in this Circuit has suggested that when an issue such as this arises the District Court should conduct an in camera investigation of the probable nature of the informant's testimony and information. United States v. Soles, supra at footnote 8 (copy attached)

4. Therefore the defendant respectfully requests the Court to order the Government to produce the informant for examination by the Court and for the Court to examine all federal agents who interviewed the informant and all reports filed by said agents. Respectfully, the undersigned on behalf of his client requests that the in camera examination be transcribed and the

transcript of same and of any reports examined by the Court be sealed and be made a Court exhibit in the event the Court denies defendant's request for the name and address of the informant.

Dated at Hartford, Connecticut this day of November, 1973.

Hubert J. Santos
Federal Public Defender
450 Main Street
Hartford, Connecticut

Subscribed and Sworn to
before me this day
of November, 1973.

Commissioner of Superior Court

CERTIFICATION

This is to certify that a copy of the above Motion and attachments was mailed, postage prepaid, to the following counsel:

Andrew Bucci, Esq., Providence, Rhode Island
John O'Neill, Esq., Providence, Rhode Island
James Wade, Esq., Hartford, Connecticut
Paul Coffey, Esq., Hartford, Connecticut

Hubert J. Santos

DISTRICT OF CONNECTICUT HARTFORD, CONN.

UNITED STATES OF AMERICA)
)
v.) CRIMINAL NO. H-524
)
DAVID GUILLETTE, et. al.)

A F F I D A V I T

The undersigned, PAUL E. COFFEY, being duly sworn, disposes and says:

1. He is a Special Attorney in the Department of Justice, he is in charge of the prosecution of the above captioned case, and has been since the alleged offenses occurred on September 29, 1972.

2. In October, 1973, he directed Salvatore Petrella, a Special Agent of the Alcohol Tobacco and Firearms (A.T.F.) Division of the United States Department of the Treasury to review his investigation of this case to determine if any investigative leads, even if later determined to be entirely unfounded, indicated that an individual other than a defendant charged herein was responsible for the death of Daniel LaPolla.

3. A review of the investigative file in this case indicated that in January of 1973, an informant told Special Agent Petrella that he had met an individual identifying himself as Anthony Souca in a bar on Nimrod Street in New York City. The informant indicated that he could not remember the name of the bar, and that this was the first and last time he had seen or talked to this individual. The informant further indicated that in the course of his conversation with Souca, he (Souca) indicated he was from Rhode Island, knew William Merrapese, and had agreed to eliminate a witness in Connecticut on behalf of Merrapese. No other details were provided by the informant.

4. Efforts were undertaken by S-A Petrella and fellow agents to determine if this lead was accurate, with the following results:

a. The existance, let alone the location, of an individual named Anthony Souca could not be determined.

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b. The bar on Nimrod Street where this conversation allegedly took place could not be located due to the inability of the informant to name the

bar or sufficiently describe it.

5. He has determined that information from this informant has never been used to set forth probable cause in any affidavit for a search warrant, nor has this informant ever been described as reliable in an application for a search warrant in any Court.

6. He has also determined that there is no additional information which this informant can supply with respect to this matter, nor is there an independent source which would indicate that the alleged conversation ever took place. The informant indicated to S-A Petrella that his meeting with Souca at the bar on Nimrod Street was a chance meeting, and resulted when both individuals learned that they were from Rhode Island.

Paul E Coffey

PAUL E. COFFEY - SPECIAL ATTORNEY
UNITED STATES DEPARTMENT OF JUSTICE

SWORN AND SUBSCRIBED BEFORE ME THIS 12th DAY OF
[illegible], 1973 AT HARTFORD, CONNECTICUT.

HENRY S. COHN
COMMISSIONER OF THE SUPERIOR COURT

UNITED STATES DISTRICT COURT

FOR THE

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	CRIMINAL NO.
v.	:	H-524
DAVID GUILLETTE, ET. AL.	:	

AFFIDAVIT

HARTFORD COUNTY)
STATE OF CONNECTICUT) ss: Hartford, Connecticut, December 27, 1973

PAUL E. COFFEY, being duly sworn, deposes and says:

1. He is a Special Attorney in the United States Department of Justice and has the primary responsibility for the prosecution of the aforementioned case.

2. On January 23, 1973 information was received from a confidential informant of unknown reliability to the effect that the informant had had a conversation in an unnamed bar with an individual named Anthony Souca. The informant did not know this individual prior to speaking to him in the bar, which was located on "Nimrod Street."

3. According to the informant, Souca admitted murduring a witness in Connecticut for William Marrapese. The informant described Souca as a white male, 5'11", 160 lbs. with brown hair. No additional information was provided.

4. A.T.F. Special Agent John Pitta, Queens, New York checked with New York City police and neighborhood sources in attempting to determine the identity of Anthony Souca and/or the names of bars on "Nimrod Street". Special Agent Pitta was unable to determine the existence of an "Anthony Souca" nor the name of the bar due to the lack of additional information supplied by the informant.

5. On December 26, 1973, a new investigation was opened to locate Anthony Souca. All bars or restaurants bearing a name similar to "Crossroads" on or near Nimrod Street or Himrod Street in New York City (Queens) are being checked.

6. A name and operation style is being checked with the New York City bomb squad and a central name and reputation index check is being done with the New York City police department.

7. A neighborhood check of Himrod Street or Himrod Street is being done to determine all possible locations of this meeting. Once the bar is identified or located, a surveillance will be placed upon it to attempt to locate Souca.

Paul E Coffey

PAUL E. COFFEY
Special Attorney
U.S. Department of Justice

Sworn to before me at Hartford, Connecticut, this 27th day of December, 1973.

Commissioner of the Superior Court

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

* * * * * * * * * * * * * * * * * * * *

UNITED STATES OF AMERICA	*	CRIMINAL ACTION
vs.	*	H-524
DAVID GUILLETTE & ROBERT JOOST	*	

* * * * * * * * * * * * * * * * * * * *

Before: HON. T. EMMET CLARIE, U.S.D.J.

In Chambers

Appearances:

For the United States of America:

PAUL A. COFFEY, ESQ.
Special Attorney
U.S. Department of Justice

ELLIOTT SPERBER
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

At least the Government is going to take the position that we are going to resist identifying him in any way, shape or form.

Q. Do you recall if you ever had a conversation with an individual by the name of Anthony Souca.

A. Yes.

Q. And where did you speak with Mr. Souca?

A. In New York.

Q. Would you tell the Court what conversation you had with Mr. Souca.

A. I met Mr. Souca in this nightclub in New York.

Q. Do you remember the name of the nightclub?

A. I sort of remember now. I don't know if it is the Crossroads, or --something to do with roads, because there is a railroad track going by there, and I remember they named it -- I don't know if it is the Overpass, or named it after something.

Q. Do you recall what street this was on?

A. Nimrod Street.

THE COURT: Do you know the name of this nightclub?

THE WITNESS: I'm not sure. I think it is the Crossroads, or something.

THE COURT: What part of New York is it in?

THE WITNESS: Queens.

THE COURT: Queens?

THE WITNESS: The Borough of Queens..

THE COURT: Queens, is that over toward Long Island? I'm not familiar --

THE WITNESS: Queens is --

THE COURT: Brooklyn?

THE WITNESS: Well, it is part of Brooklyn, yes. It is part - it is about six miles from downtown Manhattan.

BY MR. COFFEY:

Q. Are you certain that this particular bar is on Nimrod Street, or near Nimrod Street?

A. I'm pretty sure now that I recall, it is near Nimrod Street. It is a short walk --

Q. You are not sure that it is near or on?

A. I know it is near, not on. Definitely near.

Q. And how many times have you had occasion to speak with Mr. Souca in this bar?

A. I think I can recall twice. Probably more -- I can clearly recall twice.

Q. You can clearly recall twice?

Q. All right, Have you ever had a discussion with Mr. Souca, except in this particular bar?

A. No, not that I can recall.

Q. You met him in this bar?

A. Yes.

Q. And what did Mr. Souca indicate was his occupation?

A. Demolitions and firearms.

Q. Did he say for whom?

A. He didn't say, specific, you know, for anyone. He just said -- I know what you are getting at -- he told me he did something for Marrapese.

Q. Was this on the first or second occasion?

A. I'm not quite sure. I would say first -- I can't -- I should say nothing; I don't know.

Q. You are not too sure?

A. I'm not too sure.

Q. Were you drinking on this occasion?

A. Yes.

Q. Were you intoxicated?

A. Yes.

Q. Was Mr. Souca intoxicated on this occasion?

A. I guess he was feeling -- I don't know.

Q. Do you recall stating earlier this morning that you were both bombed?

A. We were both bombed. Well, it is just a saying -- I was bombed; I don't know if he was bombed. I don't know what he could drink without getting bombed.

Q. Was he drinking on that occasion?

A. Yes.

Q. Was he drinking freely?

A. Yes.

Q. What did he tell you he had done for Mr. Marrapese?

A. He blew up Daniel Lapolla.

Q. Did he use the name Daniel Lapolla?

A. Yes, he used "Lapolla" -- I know he used "Lapolla".

Q. And did he say how he did it?

A. Yes.

Q. How did he say he did it?

A. He said he went to the front door and planted the explosive, and that was it.

Q. Did he say why he did this for Mr. Marrapese?

A. For money, I would imagine. I wouldn't --

Q. You don't recall why he said he did it?

A. No.

Q. Did he mention who was with him, if anyone?

A. No.

Q. Did he mention why Daniel Lapolla had been killed?

A. No. It is known that he was a witness for the government.

Q. Did he tell you that?

A. I don't remember.

Q. You don't remember why he told you Lapolla was killed?

A. No.

Q. Did he indicate to you whether this was Mr. Marrapese's idea alone, or whether he was working with other people?

A. No, we didn't really go into it.

Q. Did Mr. Souca indicate to you why he wanted to tell you this fact?

A. No, but I gained his confidence.

Q. After having gained his confidence did he indicate that he done this?

A. Yes.

Q. All right now, do you know where Mr. Souca lives?

A. No, I don't.

Q. Can you describe the individual?

A. Yes, he's about my height.

Q. How tall are you?

A. Five-nine, five-ten. Approximately 160 pounds, 165 pounds, 170 pounds. Very dark hair. And that's it.

Q. And his first name, did he indicate that to you?

A. Anthony.

Q. All right. Now do you have any knowledge from him, having shown you any identification, that his name was or is Anthony Souca?

A. No.

Q. He told you in fact that was his name?

A. Yes.

Q. Have you ever had an occasion to speak with Mr. Souca other than on the occasion, the two occasions that you have indicated?

A. Not that I can recall.

Q. Did Mr. Souca indicate to you on the other occasion when you spoke to him any additional details, concerning this Lapolla incident?

A. No.

Q. Do you know what Mr. Souca's legitimate occupation, or way of making a living is?

A. Talking to him, from what I can remember, like I said, this is all vague -- he wasn't legitimate.

Q. I take it that he did not indicate to you what he does for a living, as far as legal --

A. He talked a lot about guns. I believe he sells guns. I think he mentioned it once.

Q. But I understand your testimony to be that he didn't indicate what if any legal occupation he had?

A. Oh, no, no.

Q. You don't know where he lives?

A. No, I don't.

Q. All right.

THE COURT: Where were you living at this time, at the time when this happened?

THE WITNESS: When he got blown up?

THE COURT: No, when you met Mr. Souca.

THE WITNESS: Rhode Island.

THE COURT: You lived in Rhode Island?

THE WITNESS: Y

THE COURT: Were you just down there for a weekend, or for a day, or for several days? How did you come to meet Souca?

THE WITNESS: I come into a few dollars, and I went out and messed around, and had a lot of fun.

BY MR. COFFEY:

Q. During one of these sprees in New York did you run into Mr. Souca?

A. Yes.

Q. And that happened, do you recall, on two occasions?

A. Yes.

Q. Did he give you any telephone numbers where he could be reached?

A. No.

Q. Did he indicate to you that there was anybody that you could get in touch with, to get in touch in turn with him, if you wanted to?

A. No.

THE COURT: Would you recognize his picture if you saw it?

THE WITNESS: I don't know, I'd have to say yes, I think I could.

THE COURT: Does the Government have any photographs of such a person by that name?

MR. COFFEY: Your Honor, this individual by this name has -- we have drawn a complete blank as far as trying to determine the very existence of an Anthony Souca.

THE COURT: You think this other fellow that you met in this bar, Anthony Souca, do you think you'd be able to identify him?

THE WITNESS: Yes.

THE COURT: If you saw his picture?

THE WITNESS: Yes, mug shots, your Honor. Like I say, I am sure -- he could be lying to me. In other words, if you feel that you have the case, he could be lying. He could be just out and out lying to me.

BY MR. COFFEY:

Q. Did he give you any information which would substantiate his claim that he had killed him?

A. No.

THE COURT: Now this Nimrod Street that you refer to, where is that specifically? In Queens or in Brooklyn? Do you go across the Brooklyn Bridge?

THE WITNESS: No, you don't go across the bridge.

THE COURT: You don't?

THE WITNESS: There is a big marketing section down there for fruit and vegetables. I remember smelling a lot of oranges. I would say it is a produce area.

BY MR. COFFEY:

Q. Is that near the bar?

A. Not far, Yes, within walking distance. When I say walking distance, I mean two blocks, maximum. That's it.

Q. From this market?

A. No, from Nimrod Street. From the very corner of Nimrod Street, the bar is within two to three blocks.

Q. Nimrod Street happens to be a long street, however. What part of Nimrod Street?

A. I'm talking about the beginning, that runs -- I can't think of the name of the street it runs by. If you go to the corner where they sell all the fruits and vegetables, it is within walking distance.

Q. Are you familiar with any landmarks or anything that sticks out in your mind in the bar?

A. No.

Q. Any big signs, neon signs? Anything like that?

A. No, there aren't all that many big neon signs in Queens.

THE COURT: All right. I guess that covers the matter. There is no one else who you know, who might know this man Souca, better than you do?

THE WITNESS: No, your Honor.

THE COURT: This was just a chance meeting that you had in this bar or nightclub? Is it a bar or is it a nightclub?

THE WITNESS: It is a nightclub. I call them all bars; it is a nightclub.

THE COURT: Were you in there in the evening, or in the daytime?

THE WITNESS: Late afternoon -- early evening. Around that time.

THE COURT: Were you in the bar part or the dining or night-club part?

THE WITNESS: The bar part.

THE COURT: The bar part? Do you know who the bartender is there? Did you get to know him?

THE WITNESS: It was a lady there one time. Going in, before meeting Souca, there was always a lady there.

THE COURT: Could you find it if you went down there again?

THE WITNESS: Yes, I could.

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

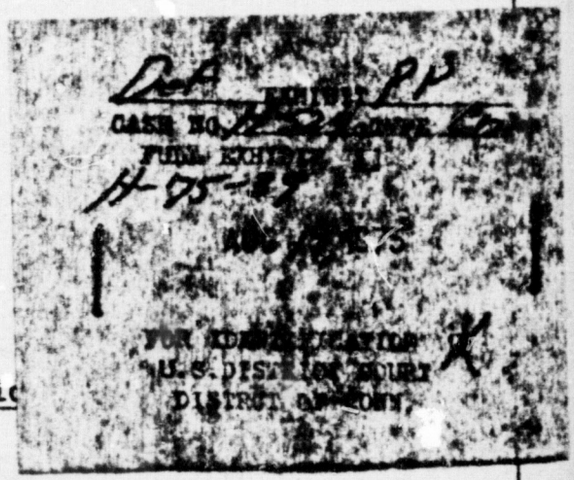
* *

UNITED STATES OF AMERICA	*	CRIMINAL ACTION
vs.	*	H-524
DAVID GUILLETTE & ROBERT JOOST	*	DECEMBER 3, 1973

* *

Before: HON. T. EMMET CLARIE, U.S.D.J.

In Chambers



Appearances:

For the United States of Americ

PAUL A. COFFEY, ESQ.
Special Attorney
U.S. Department of Justice

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appearing as a witness, being duly sworn by the Court, testified as follows:

~~MR. BERRY: Yes.~~

~~THE COURT: Very well, proceed.~~

BY MR. COFFEY:

Q Now, directing your attention, to January 23, this year, 1973, do you recall if you had occasion to speak with Agents of the Deparment of the Treasury?

A Yes, I did.

Q Were they ATF Agents?

A Yes, they were.

Q Do you recall their names?

A The first names, Jim and Sal, I think.

Q The name Jim, was that Jim Watterson and Sal Petrella?

A Yes, yes.

Q Are they the two agents that you spoke to?

A Yes.

Q Do you recall where you spoke to them?

A Yes, in the back seat of a car in the parking lot.

Q And on that evening did you have occasion to speak at all with any personnel of the local or state police force?

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A Yes, sir.

Q Do you recall to whom you spoke?

A No, I don't. Just a regular policeman.

Q From the Police Department?

A Yes.

Q Does the name Ralph Collins mean anything to you?

A No.

Q All right. Would you tell the Court what you told the Police Department?

A Certainly.

(witness related larceny for which he was arrested by local authorities.)

And when they arrested me I said "You can't bust me because I'm a United States Treasury Agent." But, I was intoxicated.

Q Were you in fact a Federal Agent?

A No chance.

Q And that was a misrepresentation?

A Yes, sir.

Q And you were intoxicated at the time?

A Yes, I was.

Q And after having told the Police officers that you were a Federal Agent, did they put you in touch with Federal Agents?

A Yes, they did.

Q That was Agent Petrella and Agent Watterson?

A Watterson, too.

Q Did you go to a hospital?

A Yes, I did.

Q At this time?

A Yes, I did.

Q Was this before or after you talked to Federal Agents?

A After.

Q Do you recall if you told the individual who entered you onto the hospital records, if you were also a Federal Agent?

A I don't know that.

Q Would it refresh your memory if I showed you the hospital record, which shows you being checked into the hospital as a Treasury Agent?

A Yes.

Q Were you still intoxicated that time?

A Yes, I was.

Q Now, when Agents Petrella and Watterson arrived did you have a discussion with them?

A I don't remember.

Q You don't remember what discussion you had with them?

A No, I don't, really.

Q Do you recall if you ever had a conversation with an individual by the name of Anthony Souca?

A Yes.

Q And where did you speak with Mr. Souca?

A In New York.

Q Do you recall if you told the Federal Agents about your conversation with Mr. Souca?

A I don't remember if it was at that particular time. Like I said, I told you earlier, that I had a drinking problem -- because I still have a drinking problem -- and my memory would go, like if you could tell me something today, tomorrow I would forget about it. And sometimes I would remember perfectly clear what happened. I don't remember that.

Q Would you tell the Court what conversation you had with Mr. Souca.

A Well, this morning -- let me say this -- this morning when I saw Jim and Sal come to the detention cell, where I am at right now, everything came back to me.

They didn't say what I was here for; I thought I was coming up for some charge or something. And the wheels started turning, and I remembered vaguely, you know, I remember telling them that I met Mr. Souca in this nightclub in New York.

Q Do you remember the name of the nightclub?

A I sort of remember now. I don't know if it is the Crossroads, or -- something to do with roads, because there is a railroad track going by there, and I remember they named it -- I don't know if it is the Overpass, or named it after something.

Q Do you recall what street this was on?

A Nimrod Street.

THE COURT: Do you know the name of this nightclub?

THE WITNESS: I'm not sure. I think it is the Crossroads, or something.

BY MR. COFFEY:

Q Do you recall the time that you spoke to the Federal Agents whether you knew the name of it?

A I don't remember. No, I don't.

Q Now, do you know --

THE COURT: What part of New York is it in?

THE WITNESS: Queens.

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THE COURT: Queens?

THE WITNESS: The Borough of Queens.

THE COURT: Queens, is that over toward Long Island? I'm not familiar --

THE WITNESS: Queens is --

THE COURT: Brooklyn?

THE WITNESS: Well, it is part of Brooklyn, yes. It is part -- it is about six miles from downtown Manhattan.

BY MR. COFFEY:

Q Are you certain that this particular bar is on Nimrod Street, or near Nimrod Street?

A I'm pretty sure now that I recall, it is near Nimrod Street. It is a short walk --

Q You are not sure that it is near or on?

A I know it is near, not on. Definitely near.

Q And how many times have you had occasion to speak with Mr. Souca in this bar?

A I think I can recall twice. Probably more -- I can clearly recall twice.

Q You can clearly recall twice?

THE COURT: Do you live down there, or did you live there? How did you come to be there? Normally I wouldn't be there -- I am wondering why you were there.

THE WITNESS: Yes, I used to live in New York.

I got to know a lot of guys, that as they say, go on the lam, from Rhode Island. And they used -- Queens is a favorite hideout of guys to go on the lam.

And I met somebody once in a nightclub down there, who took me to a crap game. When I started to go to the crap game I got familiar with the area, and got to know some people, and stayed over there when I went to New York.

BY MR. COF

Q All right. Have you ever had a discussion with Mr. Souca, except in this particular bar?

A No, not that I can recall.

Q You met him in this bar?

A Yes.

Q And what did Mr. Souca indicate was his occupation?

A Demolitions and firearms.

Q Did he say for whom?

A He didn't say, specific, you know, for anyone. He just said -- I know what you are getting at -- he told me he did something for Marrapese.

Q Was this on the first or second occasion?

A I'm not quite sure. I would say first -- I can't -- I should say nothing; I don't know.

Q You are not too sure?

A I'm not too sure.

Q Were you drinking on this occasion?

A Yes.

Q Were you intoxicated?

A Yes.

Q Was Mr. Souca intoxicated on this occasion?

A I guess he was feeling -- I don't know.

Q Do you recall stating earlier this morning that you were both bombed?

A We were both bombed. Well, it is just a saying -- I was bombed; I don 't know if he was bombed. I don't know what he could drink without getting bombed.

Q Was he drinking on that occasion?

A Yes.

Q Was he drinking freely?

A Yes.

Q What did he tell you he had done for Mr. Marrapese?

A He blew up Daniel LaPolla.

Q Did he use the name Daniel LaPolla?

A Yes, he used "LaPolla" -- I know he used "LaPolla".

Q And did he say how he did it?

A Yes.

Q How did he say he did it?

A He said he went to the front door and planted the explosive, and that was it.

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OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

Q Did he say why he did this for Mr. Marrapese?

A For money, I would imagine. I wouldn't --

Q You don't recall why he said he did it?

A No.

Q Did he mention who was with him, if anyone?

A No.

Q Did he mention why Daniel LaPolla had been killed?

A No. It is known that he was a witness for the Government.

Q Did he tell you that?

A I don't remember.

Q You don't remember why he told you LaPolla was killed?

A No.

Q Did he indicate to you whether this was Mr. Marrapese's idea alone, or whether he was working with other people?

A No, we didn't really go into it.

Q Did Mr. Souca indicate to you why he wanted to tell you this fact?

A No, but I gained his confidence.

Q After having gained his confidence did he indicate that he done this?

A Yes.

Q All right now, do you know where Mr. Souca lives?

A No, I don't.

Q Can you describe the individual?

A Yes, he's about my height.

Q How tall are you?

A Five-nine, five-ten. Approximately 160 pounds, 165 pounds, 170 pounds. Very dark hair. And that's it.

Q And his first name, did he indicate that to you?

A Anthony.

Q All right. Now do you have any knowledge from him, having shown you any identification, that his name was or is Anthony Souca?

A No.

Q He told you in fact that was his name?

A Yes.

Q Have you ever had an occasion to speak with Mr. Souca other than on the occasion, the two occasions that you have indicated?

A Not that I can recall.

Q Did Mr. Souca indicate to you on the other occasion when you spoke to him any additional details, concerning this LaPolla incident?

A No.

Q Do you know what Mr. Souca's legitimate occupatin, or way of making a living is?

A Talking to him, from what I can remember, like I

said, this is all vague -- he wasn't legitimate.

Q I take it that he did not indicate to you what he does for a living, as far as legal --

A He talked a lot about guns. I believe he sells guns. I think he mentioned it once.

Q But I understand your testimony to be that he didn't indicate what if any legal occupation he had?

A Oh, no, no.

Q You don't know where he lives?

A No, I don't.

Q All right.

THE COURT: Where were you living at this time, at the time when this happened?

THE WITNESS: When he got blown up?

THE COURT: No, when you met Mr. Souca.

THE WITNESS: Rhode Island.

THE COURT: You lived in Rhode Island?

THE WITNESS: Yes.

THE COURT: Were you just down there for a weekend, or for a day, or for several days? How did you come to meet Souca?

THE WITNESS: I come into a few dollars, and I went out and messed around, and had a lot of fun.

BY MR. COFFEY:

Q During one of these sprees in New York did you run

ELLIOTT SPERBER
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

into Mr. Souca?

A Yes.

Q And that happened, do you recall, on two occasions?

A Yes.

Q Have you ever seen him again following these conversations?

A I went to prison right after that.

Q Did he give you any telephone numbers where he could be reached?

A No.

Q Did he indicate to you that there was anybody that you could get in touch with, to get in touch in turn with him, if you wanted to?

A No.

THE COURT: Would you recognize his picture if you saw it?

THE WITNESS: I don't know. I 'd have to say yes, I think I could.

THE WITNESS:

I happen to know a guy by that name who has been in prison for ten years in Rhode Island.

THE COURT: Anthony Souca?

THE WITNESS: Yes, Anthony Souca.

THE COURT: Where is he at this time?

THE WITNESS: In a correctional institution; been there for ten years.

BY MR. COFFEY:

Q He's been there for the past ten years?

A Yes.

Q He hasn't been on the street, to your knowledge, in 1972?

A No, definitely not.

THE COURT: Do you know Marrapese?

THE WITNESS: Sure. I knew Marrapese when I was ten years old.

THE COURT: How well do you know him?

THE WITNESS: Very well, very well.

THE COURT: Are you a friend of his?

THE WITNESS: No -- not an enemy either. I just don't -- if I seen him I would say hello to him, but I wouldn't go looking for him to talk to him. I would never need him to do a favor for me.

if they line Joost and Guillette up side by side, and just gave their names the opposite way,

I would be naming them by their wrong names. Because, I don't know them. I seen pictures of them.

THE COURT: You think this other fellow that you met in this bar, Anthony Souca, do you think you'd be able to identify him?

THE WITNESS: Yes.

THE COURT: If you saw his picture?

THE WITNESS: Yes, mug shots, your Honor. Like I say, I am sure -- he could be lying to me. In other words, if you feel that you have the case, he could be lying. He could be just out and out lying to me.

BY MR. COFFEY:

Q Did he give you any information which would substantiate his claim that he had killed him?

A No. Like a guy comes in and says to me, we start drinking in a nightclub, and he says to me do you know who done this? And he tells me a guys name. And you go to another place, and you get a different name.

THE COURT: Do you have any ill will or bad feelings toward Marrapese?

THE WITNESS: I could care less what happens to Bill Marrapese. I don't care if he is found guilty or innocent. I don't care.

THE COURT: Do you bear any ill will toward him?

THE WITNESS: I never had anything to do with him.

THE COURT: Nothing to do with him?

THE WITNESS: No, or Joost or Guillette.

THE COURT: Now this Nimrod Street that you refer to, where is that specifically? In Queens or in Brooklyn? Do you go across the Brooklyn Bridge?

THE WITNESS: No, you don't go across the bridge.

THE COURT: You don't?

THE WITNESS: There is a big marketing section down there for fruit and vegetables. I remember smelling a lot of oranges. I would say it is a produce area.

BY MR. COFFEY:

Q Is that near the bar?

A Not far. Yes, within walking distance. When I say walking distance, I mean two blocks, maximum. That's it.

Q From this market?

A No, from Nimrod Street. From the very corner of Nimrod Street, the bar is within two to three blocks.

Q Nimrod Street happens to be a long street, however.

What part of Nimrod Street?

A I'm talking about the beginning, that runs -- I can't think of the name of the street it runs by. If you go to the corner where they sell all the fruits and vegetables, it is within walking distance.

Q Are you familiar with any landmarks or anything that sticks out in your mind in the bar?

A No.

Q Any big signs, neon signs? Anything like that?

A No, there aren't all that many big neon signs in Queens.

THE COURT: All right. I guess that covers the matter. There is no one else who you know who might know this man Souca, better than you do?

THE WITNESS: No, your Honor.

THE COURT: This was just a chance meeting that you had in this bar or nightclub?

THE WITNESS: You see, a lot of Rhode Islanders hang around in there, you know.

THE COURT: Is it a bar or is it a nightclub?

THE WITNESS: It is a nightclub. I call them all bars; it is a nightclub.

THE COURT: Were you in there in the evening, or in the daytime?

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UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

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THE WITNESS: Late afternoon -- early evening. Around that time.

THE COURT: Were you in the bar part or the dining or nightclub part?

THE WITNESS: The bar part.

THE COURT: The bar part? Do you know who the bartender is there? Did you get to know him?

THE WITNESS: It was a lady there one time. Going in, before meeting Souca, there was always a lady there.

THE COURT: Could you find it if you went down there again?

THE WITNESS: Yes, I could.

THE COURT: All right. Anything else?

MR. COFFEY: No, your Honor.

THE COURT: All right, sir, thank you for coming.

THE WITNESS: Your Honor, am I all done in this case? I certainly hope so.

THE COURT: Yes, I think so. I think that we have completed the purpose of this hearing.

THE WITNESS: Beautiful.

(Whereupon at 12:55 p.m. the hearing was concluded)

ELLIOTT SPERBER
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA	:	
	:	
V.	:	DOCKET NO. 74-1333
	:	74-1342
DAVID GUILLETTE AND	:	
ROBERT JOOST	:	

AFFIDAVIT OF ATTORNEY JAMES A. WADE

I, JAMES A. WADE, Attorney for Robert Joost, being first duly sworn, depose and say:

1. That on Friday, June 7, 1974, at approximately 3:15 P.M. I drove my automobile to the Ridgewood section of the Queens in New York City and parked the same at the corner of Himrod Street and Metropolitan Avenue, and there took a photograph of the intersecting street sign. (See photograph No. 1.)

2. That I then walked West on Metropolitan Avenue a distance of approximately 200 yards or three city blocks, and there took photographs of the exterior of the Crossroads Lounge, 53-57 Metropolitan Avenue, which is located at the intersection of 54th Street and Metropolitan Avenue. (See photographs Nos. 2, 3 and 4.)

3. That I then entered the Crossroads Lounge and spoke with the bartender inquiring about the whereabouts of one Anthony Souca, having first advised the bartender that I was a defense attorney involved in a criminal proceeding in Hartford, Connecticut.

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4. That the bartender advised me that he personally did not know of an Anthony Souca but he agreed to take my business card and to contact me if he was able to identify such a person.

5. That I then proceeded approximately four blocks North of the Crossroads Lounge and took a photograph of the railroad crossing at 56th Street. (See photographs Nos. 5 and 6.)

6. That on information and belief, in view of the physical identifying signs in the vicinity, it is believed that the Crossroads Lounge referenced above is the site identified by the confidential informant, whose name neither the government nor the court would disclose to us, where he met one Anthony Souca and there discussed the killing of Daniel LaPolla.

Dated at Hartford, Connecticut, this 8th day of June, 1974.

James A. Wade

James A. Wade

Subscribed and sworn to
before me this 8th day
of June, 1974.

Barclay Robinson, Jr.

Barclay Robinson, Jr.
Commissioner of the Superior Court

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
vs.	:	
		CRIMINAL NO. H-524
DAVID GUILLETTE and ROBERT JOOST	:	

MOTION RE ANTHONY SOUCA INFORMANT

The defendants, DAVID GUILLETTE and ROBERT JOOST, move that they be permitted to interview the unidentified government informant who, has given information to federal law enforcement officials and who testified in camera before the Honorable T. Emmet Clarie regarding an alleged conversation with one, ANTHONY SOUCA, in the Crossroad Lounge in New York regarding the killing of a witness for William Marapese.

These defendants further move that the government be required to produce any and all evidence of whatsoever kind and nature which it has in its possession or of which it has knowledge relative to this alleged conversation with the said Anthony Souca or relative to the whereabouts and identity of the said Anthony Souca whether inculpatory or exculpatory of these defendants.

These defendants further move that the government be required to file with the court an affidavit detailing all investigatory steps taken by it in pursuing and investigating this so-called

Anthony Souca lead.

DAVID GUILLETTE

By Hubert J. Santos

Hubert J. Santos
Buckley & Santos
51 Russ Street
Hartford, Connecticut

ROBERT JOOST

By James A. Wade

James A. Wade
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut

CERTIFICATION

I hereby certify that a copy of the foregoing motion was mailed to Paul Coffey, Special Attorney, Department of Justice, 450 Main Street, Hartford, Connecticut; C. Thomas Zinni, Esq., 53 Mt. Vernon Street, Boston, Massachusetts 02103; and Andrew A. Bucci, Esq., 9 Steeple Street, Providence, Rhode Island, this 30 day of May, 1975.

James A. Wade

James A. Wade

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
vs.	:	CRIMINAL NO. H-524
	:	
DAVID GUILLETTE and ROBERT JOOST	:	
	:	

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Anthony Souca lead.

DEFENDANT, DAVID GUILLETTE

By Hubert J. Santos
Hubert J. Santos
His Attorney
Buckley & Santos
51 Russ Street
Hartford, Connecticut

DEFENDANT, ROBERT JOOST

By James A. Wade
James A. Wade
His Attorney
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut

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I hereby certify that a copy of the foregoing motion was mailed to Paul Coffey, Special Attorney, Department of Justice, 450 Main Street, Hartford, Connecticut; C. Thomas Zinni, Esquire, 53 Mt. Vernon Street, Boston, Massachusetts 02103; and Andrew A. Bucci, Esquire, 9 Steeple Street, Providence, Rhode Island, this 14th day of October, 1975.

James A. Wade
James A. Wade

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

V. CRIMINAL NO. H-5]4

WILLIAM MARRAPESE et. al.

TRANSCRIPT

FRIDAY, MARCH 31, 1972
AMERICAN UNIVERSAL GOLD BUYERS
CRANSTON, RHODE ISLAND

SECTION I

DANIEL LAPOLLA: - [redacted] HEY. AHH. GET THE DOOR. I GOT A DEAL.

WILLIAM MARRAPESE: - WHAT KIND OF DEAL?

DANIEL LAPOLLA: - AHH. (door close) MET A GUY IN NEW YORK.

WILLIAM MARRAPESE: - YEAH.

DANIEL LAPOLLA: - AND AHH. YOU KNOW THE M-SIXTEENS THOSE GUYS BURIED DOWN THERE?

WILLIAM MARRAPESE: - YEAH.

DANIEL LAPOLLA: - HE THINKS HE CAN GET THE BOLTS. WHAT SHOULD I SAY TO HIM YOU WANT? (unclear) CAN YOU HANDLE IT?

WILLIAM MARRAPESE: - WAHT FOR THE RIFLES?

DANIEL LAPOLLA: - YEAH.

WILLIAM MARRAPESE: - YOU KNOW WHERE THE RIFLES ARE?

DANIEL LAPOLLA: - YEAH. WELL, LET THEM GO DOWN AND DIVE FOR THEM. WHAT DO I KNOW. YOU THINK THEY COULD.

WILLIAM MARRAPESE: - YEAH. THEY'D GO.

DANIEL LAPOLLA: - ALL RIGHT. (unclear)

WILLIAM MARRAPESE: - THEY WAS THIRTY RIFLES, RIGHT?

DANIEL LAPOLLA: - THERE WERE TWENTY-NINE. THE OTHER ONE (unclear)

WILLIAM MARRAPESE: - THERE WAS ONE STOLEN. YEAH. (increased noise)

NICHOLAS ZINNI: - HE WANTS TO BUY THE RIFLES?

DANIEL LAPOLLA: - YEAH. HE THINKS HE CAN GET THE BOLTS.

WILLIAM MARRAPESE: - TELL HIM A HUNDRED A PIECE.

DANIEL LAPOLLA: - A HUNDRED A PIECE. WILL BOBBY AND DAVIE GO DOWN AND GET-EM?

WILLIAM MARRAPESE: - WE'LL GET SOMEONE DOWN THERE.

DANIEL LAPOLLA: - HA-HA. O.K. ALL RIGHT. YEAH. THAT'S ALL.

WILLIAM MARRAPESE: - NO IT AIN'T. YOU'RE GOING TO COME DOWN AND TRANSPORT THEM DANNY.

DANIEL LAPOLLA: - I AIN'T GONNA HANDLE-EM.

WILLIAM MARRAPESE: - LOOK, WHEN YOU GOING TO BE HERE? WHEN? TUESDAY?

DANIEL LAPOLLA: - YEAH.

WILLIAM MARRAPESE: - YEAH. TELL THE GUY O.K.

DANIEL LAPOLLA: - CAUSE I'LL SEE HIM SATURDAY AGAIN. (unclear)

WILLIAM MARRAPESE: - WHEN ARE YOU GOING TO SEE THE GUY? SATURDAY?

DANIEL LAPOLLA: - YEAH.

WILLIAM MARRAPESE: - TELL HIM, AHH. IT WILL TAKE ABOUT A WEEK TO GET THEM.

DANIEL LAPOLLA: - ABOUT A WEEK TO GET THEM?

WILLIAM MARRAPESE: - YEAH. AHH. ITS A LITTLE CHILLY RIGHT NOW.

DANIEL LAPOLLA: - (15 sec. unclear with laughter)

SECTION III

WILLIAM MARRAPESE: - REAL SOFT?

DANIEL LAPOLLA: - SURE.

WILLIAM MARRAPESE: - HOW FAR IS IT FROM YOUR HOUSE?

DANIEL LAPOLLA: - (unclear) HAVE YOU EVER BEEN TO DANIELSON, CONNECTICUT?

WILLIAM MARRAPESE: - THAT'S WHAT I SAID, NEAR A ROTARY. (unclear) THE OLD ROAD TO NEW YORK.

DANIEL LAPOLLA: - YEAH. (23 sec. unclear) YOU KNOW HOW BIG THE SCHOOL IS ON (unclear) STREET USED TO BE? I'M JUST TELLING YOU

THE SCHOOL. YOU KNOW HOW BIG THAT USED TO BE?

WILLIAM MARRAPESE: - (unclear) STREET SCHOOL.

DANIEL LAPOLLA: - YEAH.

WILLIAM MARRAPESE: - HOW BIG IN COMPARISON TO (unclear)
(7 sec. unclear)

DANIEL LAPOLLA: - (unclear) HOW MANY CELLS IS THAT? IT ISN'T BIG.
(unclear) STORIES, THAT'S ALL.

WILLIAM MARRAPESE: - A BIG CITY BLOCK.

DANIEL LAPOLLA: - IT'S LIKE A BIG APARTMENT HOUSE. BILLY, ITS LIKE A BIG APARTMENT HOUSE. LIKE ABOUT FOUR OR FIVE STORIES HIGH, AND MAYBE ABOUT TWO LOTS BIG. NO MORE THAN TWO OR THREE LOTS. (laughing) YOU'RE KIDDING? (12 sec. unclear) LET ME KNOW, SO I CAN (unclear) (23 sec. unclear)

SECTION IV

DANIEL LAPOLLA: - HEY BILLY, YOU TRYING TO GET RID OF THE RAT POPULATION UP THERE?

WILLIAM MARRAPESE: - YEAH.
(63 sec. unclear)

SECTION V

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WILLIAM MARRAPESE: - AHH YOU HEAR FUNNY THINGS.

DANIEL LAPOLLA: - AHH. WHO'S UP THERE?

MARRAPESE, WILLIAM L. 901791

DISCHARGE SUMMARY 8/3/72 Dict. 9/15/72 8/5/72 Tr. 9/22/72

Chief complaint: Marked anxiety.

Present illness: The patient has noted mounting anxiety and depression over the past several months secondary to personal and business pressures. Over the past week there has been an increase in symptom associated with misinterpretations and difficulties in reality testing. His appetite has been dropping off with an approximate 6-lb. weight loss and he has been sleeping very restlessly.

Review of systems: Generally healthy individual prior to 1971. Acut rectal bleeding diagnosed as ulcerative colitis in 2/71, treated at the Rhode Island Hospital. Occasional loose stools and abdominal discomfort noted at present. Acute myocardial infarction in 3/71 treated at Rhode Island Hospital, relatively stable at present with occasional premature contractions related to anxiety. Treated inter mittently since 1970 for anxiety-related symptoms.

PHYSICAL EXAMINATION Temperature normal, blood pressure 110/76, pulse 68 and regular. Mental status examination showed anxious male who on admission was under great pressure showing misinterpretations and difficulty in reality testing. The remainder of the physical examination was within normal limits.

LABORATORY Hematocrit 45 percent, white blood count 7,300 with a normal differential. Urinalysis normal.

COURSE The patient was treated with 100 mg. of Thorazine h.s. and over the next 48 hours showed gradual improvement such that on discharge on 8/5/72 he was much less anxious showing no misinterpretations and good reality testing.

CONDITION Markedly improved.

DIAGNOSIS 309.3 Adulte situational reaction.

COMPLICATIONS None.

OPERATIONS None.

RECOMMENDATIONS Continue Thorazine 100 mg. h.s., follow-up appointment given to be seen in my office.

REFERRED TO Frank W. Sullivan, M. D.

Frank W. Sullivan, M. D./PD-cw

cc: Dr. F. Sullivan, Dr. E. Iannuccilli

RHODE ISLAND HOSPITAL

MARRAPESE, WILLIAM L. #911549

DISCHARGE SUMMARY 1/5/73 Dict. 2/12/73 1/11/73 Tr. 2/13/73

Chief complaint: Marked anxiety.

Present illness: The patient had noted increased anxiety and anger at a reversal in a personal situation, feeling increasingly impotent and frustrated and not being able to discharge feeling adequately. Paranoid thinking seemed to be developing but no real break with reality was noted. The patient was sleeping quite restlessly and his appetite was diminished with an associated 6-8 pound weight loss. He denied suicidal ideation.

Review of systems: Essentially negative, other than ulcerative colitis in 1971 which has generally been in remission since and followed by Dr. Iannuccilli. He is currently being treated with Prednisone 20 mg. qod, Azulfidine and Metamucil. He also had a myocardial infarction in 1971 with occasional shortness of breath and premature ventricular contractions since, usually associated with anxiety.

PHYSICAL EXAMINATION Temperature normal. Blood pressure 110/88. Pulse 72 and regular. The remainder of the physical examination was essentially negative, other than patient was obviously anxious and distraught with a clear sensorium.

LABORATORY Normal urinalysis and CBC. Cholesterol 263 mg.%. Triglycerides 235 mg.%. Transaminase, alkaline phosphatase and T4 normal.

COURSE The patient was treated with bedrest and Thorazine 50 mg. q 4 hours prn with 100 mg. hs. He showed a gradual remission of his emotional symptoms. He was seen in consultation by Dr. Iannuccilli who felt that his general physical condition was stable and that the 1+ and 2+ benzidine were not indicative of active colitis. An episode of premature ventricular contractions was evaluated by Dr. Iannuccilli who felt it was transient with no evidence of change in his cardiac status.

CONDITION: Much improved.

DIAGNOSIS: 2/7/3 Adult situational reaction.

COMPLICATIONS: None.

OPERATIONS: None.

RECOMMENDATIONS: Outpatient followup through the undersigned and Dr. Iannuccilli.

REFERRED TO:

FRANK SULLIVAN, M.D./PD--kw

cc: Drs. Frank Sullivan, Edward Iannuccilli.

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FORM 4-12 STATE

DISCHARGE SUMMARY

3/23/73
Dict. 4/9/73

3/25/73
Tr. 4/16/7

Chief complaint: Anxiety and sleeplessness of one week's duration

Present illness: The patient has had several hospitalizations since 1971 for anxiety, depression, acute myocardial infarction, ulcerative colitis and episodes of premature ventricular contractions. Although his physical health has been fairly stable over the past several months, he became increasingly anxious as a long-standing litigation matter became settled. Along with this he became quite restless with accompanying appetite loss and sleeplessness. Because of his past instability it was felt that brief hospitalization was warranted. Depression was not a prominent feature at this time.

Review of systems: Significant mainly for an ulcerative colitis in 1971 which has generally been in remission being followed by Dr. Iannuccilli. He is currently taking Prednisone 7½ mg. daily, Metamucil 1 tsp. daily. He had myocardial infarction in 1971 without recurrence, also followed by Dr. Iannuccilli. He has some recurrent premature ventricular contractions, usually associated with anxiety less frequently in present months, also being followed by Dr. Iannuccilli.

PHYSICAL EXAMINATION Temperature 98.6. Blood pressure 120/86. Pulse 78 and regular. General physical examination was within normal limits other than some tenderness to palpation in the left lower quadrant and his mental status examination which showed an anxious male with no significant depression.

LABORATORY Urinalysis normal other than 0-1 red blood cell and 4-6 white blood cells. Hemoglobin 15.6. Hematocrit 42.5. White blood count 8,300 with a normal differential. Stool benzidine negative.

COURSE The patient was seen daily in psychotherapy and treated with Valium 10 mg. qid and Chloralhydrate for sleep. He was continued on the Prednisone 7½ mg. every other day, Metamucil 1 tsp. daily and Mylanta prn. He improved quite rapidly and was discharged on 3/25/73 with plans to have repeat urinalysis as an outpatient.

CONDITION: Much improved.

DIAGNOSIS: 300 Anxiety neuroses.

COMPLICATIONS: None.

OPERATIONS: None.

RECOMMENDATIONS: Followup appointment given with Dr. Sullivan. Routine followup to continue with Dr. Iannuccilli.

FORM M-12

REFERRED TO:

Frank W. Sullivan

FRANK W. SULLIVAN, M.D./PD--kw

cc: Drs. Frank Sullivan, Edward Iannuccilli.

RHODE ISLAND HOSPITAL 302

MARRAPESE, WILLIAM L. #930028

10/6/73 10/10/73
Dict: 11/5/73 Tran: 11/5/73

DISCHARGE SUMMARY

Chief Complaint: Difficulty in concentrating for 2 weeks.

Present Illness: This patient had been previously hospitalized several times here since 1971 for a variety of reasons including anxiety, depression, acute myocardial infarction, ulcerative colitis and premature ventricular contractions. His last admission was for anxiety approximately 6 months ago. He was being seen as an outpatient since that time and over the past 2 weeks became increasingly withdrawn with feelings of hopelessness difficulty in concentrating in forming his thoughts and mixed anxiety and depression. His sleep was increasingly fittul and his appetite decreased with an associated 3-5 pound weight loss. He denied suicide ideation at the time of hospitalization. He was hospitalized because his past history had shown a development of poor reality testing with increasing stressful situations.

Review of Systems: The review of systems were significant as noted above in past hospitalizations and specifically for past history of ulcerative colitis which was followed by Dr. Iannuccilli and was currently in remission and was not requiring medication, acute myocardial infarction in 1971 without sequelae, ocassional episodes of PVC usually associated with anxiety.

PHYSICAL EXAMINATION Blood pressure 112/78, pulse 86, respirations 20, temperature 98.0. Physical examination was essentially within normal limits other than the mental status exam which showed dejected posture, depressed affect, preoccupation, and at times inappropriate affect.

LABORATORY Urinalysis normal except for 15 to 20 white blood cells. Hemeglobin 15.5, white blood count 8,700 with normal differential.

COURSE The patient was seen daily in Psychotherapy and treated with Thorazine 300 mgs. daily. The patient's ability to concentrate as well as affect improvement were noted and he was much improved by the date of discharge, 10/10/73. The white blood cell noted on the initial urinalysis had been noted in previous hospitalization and had in the past been due to a chronic low grade prostatitis and was not felt to require specific treatment as it had been followed by Dr. Iannuccilli.

CONDITION: Much improved

DIAGNOSIS: 310.5 Depressive neurosis

COMPLICATIONS: None

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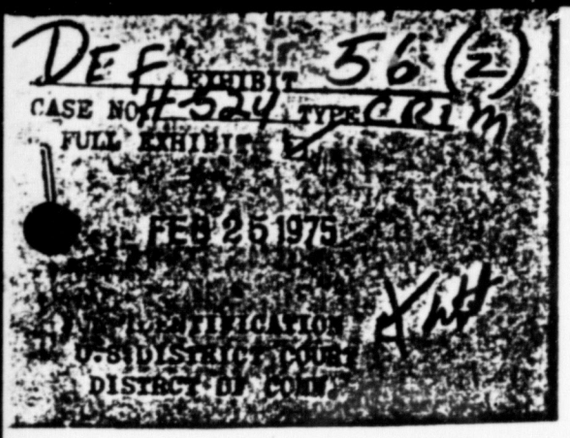
OPERATIONS: None

RECOMMENDATIONS: Continue Thorazine 200 mgs. hs and return to outpatient psychiatric treatment

REFERRED TO: The undersigned

Frank W. Sullivan, M.D./PD-ra

cc: Dr. Frank W. Sullivan



May 1, 1974

Mr. William Marrapese
c/o Syms Street Correctional Center
72 Syms Street
Hartford, Connecticut

Dear Billy:

I have talked with Ray Daniels concerning our discussion and I think everything will be able to be worked out satisfactorily.

I also spoke with Andrew relative to your comments on the past fees for last Summer. He has indicated to me that he received no cash fees and that the balance due is an amount equal to the amount I am charging you in the instant case. He also indicated that we (the firm) would be hard-put to have me absent for 9 to 10 weeks unless past payments are brought up-to-date prior to trial.

Very truly yours,

John A. O'Neill, Jr.

JAO:jb

Aug 6, 1974
7:25 P.M.

William Marrapese
Box PMB 97051
Atlanta Ga 30315

Dear John

How goes the golf game. Are you hitting that Sever iron out of sight. How is everything going at the office? Well I thought I would drop you a line to see what is going on about my case. I hasn't heard from anybody so far. So I am pretty much in the dark.

What about the hearing. Are we going to have one or not? Did you receive the transcript yet? If so I would like to have a copy Roy had said he would send me one

What I would really like is any information at all about the case something that might keep my head a little busy. Things here ain't bad at all I am repairing telephones. A lot of guys are going to State prisons to do their time because of hardship of their family traveling back and forth. I was wondering if you could get me any information about it. The Feds just started doing this June 1st

How has your summer been? How you been down to your summer house much with Bill B. Well John I will close for now waiting for any kind of answ

A Friend
Bill

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JAMES L O'NEILL
ROBERT J DeCESARIS
STEPHEN E S HEALEY
SALVATORE L ROMANO JR

Nine Steeple Street
Providence, Rhode Island 02903

August 14, 1974

Mr. William Marrapese
Post Office Box PMB
Atlanta, Georgia 30315

Dear Bill:

As you may have heard, your Motion for a New Trial on newly discovered evidence is scheduled for early September. As of now I'm not quite sure what date has been set because it is dependent upon Ray Daniels' return from California. At any rate, it will be either the 5th or the 12th of Sept.

Your appeal has been help up pending a determination of the motion. This is a favorable situation insofar as it gives additional time for David's case along with Pacelli and Erlichman's to be decided. David's matter, as you know, is relevant on several issues. The other two are applicable only on the 241 argument. I sent Erlichman's lawyer a note relative to our 241 argument and although he didn't raise it during trial, I suspect it will be raised on appeal in that as a jurisdictional, it may be raised at any time.

All of the points you raised in your letter have been gone over. Specifically, I believe we are going to use the attorney argument, although I personally don't think its your best. We are not going to use the jury-waived argument as we would have to topple both a statute and a Supreme Court decision to do so. By raising it we would merely be using up space which will be needed to raise more solvent points. Yes, definitely, most emphatically and most assuredly we are going to raise Mr. Coffey's summation for several reasons.

William Marrapese
August 14, 1974

Bill, we haven't received a transcript yet, but I can assure you we'll send one down as soon as we get it.

I have been playing golf with B.B. and, to use his expression, I'm showing him where the money shit in the buckwheat.

I don't know what has been going on relative to releasing your surety, however, I received a call from Paul LaRosa on another matter and he volunteered that it should be no problem and that he would do anything he could to help.

OH! I don't know if you remember but we were worried about standing to use David's search and seizure arguments. I believe that problem has been solved and that we should be able to adopt that argument.

I have not talked to Hubert (Ron) in that he is off on the campaign trail for his prospective partner and is leaving the Public Defender's office in September. It is my understanding, however, that he is going to continue to remain active in this case.

If there is anything else you need, drop me a line.

Sincerely,

John A. O'Neill, Jr.

JAO:jb

Friday 9, 1974

W. Mangean

Dear John

I hope this letter finds you in good health. John I wanted to know in my brief (1) if you are going to raise the point of me not having the Attorney I wanted (2) That I wanted my trial without a jury (3) Paul Coffey when he sumed up to the jury he had our prints and not Dave's or Bobby prints and they might have planted the Device. He indeed had all our prints from Oct 12, 1972 when Judge Claire ordered them.

I know you most likely have gone over this but I just wanted to be sure. My half of head never stops spining

Well say hello to everyone and Drop me a line

Your Friend
Bill

William Mahaffey
Box PMB 97051
Atlanta Ga.
30315

Sunday 25, 1974

Dear John

How are all my friends at the office doing. I just received your letter dated august 14, 1974 I was unaware of the motion be granted. I wish you could understand my mail is all screwed up here. I am just starting to get it now.

On our motion for a new trial on newly discovered evidence. Is it because Paul Coffey did not disclose the prints to us at trial time

Or is it because of his summation where he claimed he did not have the prints of Foost & Gillette and that they could have planted the bomb. I am confused as to what this hearing is about.

Please write me and explain when you can it might slow my head down a little. Also John did you receive a copy of Hubert's replay brief. I read it and it sounded very good.

Please send me Ray Daniels address so i can also write him. John please try to get the release for me on my surety Bond. Ray Daniels as well as andy stated they would get it released for me and have not done so yet. Take care of yourself and don't fall off any bar stools. ha ha

Sincerely Your Friend
Bill

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SALVATORE L. ROMANO, JR.

Nine Steeple Street
Providence, Rhode Island 02903

August 29, 1974

Mr. William Marrapese #97051
Box P M B
Atlanta, Georgia 30315

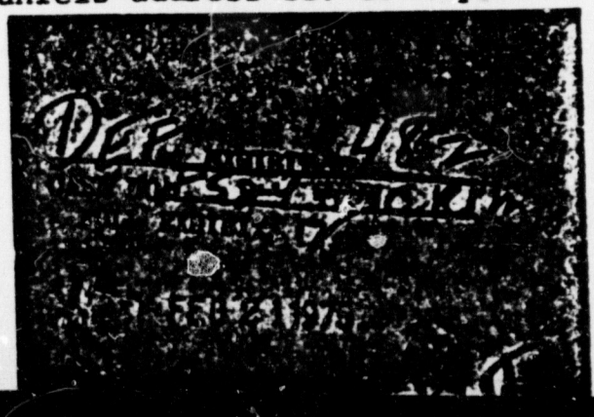
Dear Bill:

As I indicated, the hearing on your motion is scheduled for September 5th as best as I can determine and they are not going to bring you or Nick in for the motion, insofar as the Government has taken the position that your presence is not needed. This may be true, however, should McDonald deny that he took your fingerprints at the grand jury on or about the 12th day of October, your presence will become mandatory and I would imagine that the hearing would be continued in order to have you testify.

The purpose of the motion is two-fold. 1) on newly discovered evidence wherein we are intimating that had we known about the fingerprints prior to trial, we could have excluded Joost and Guillette, thereby preventing the Government from arguing that it could have been Joost and Guillette as agents for you and Nick. 2) that the Government knew of the existence of these reports and suppressed them, contrary to a lot of case law in the Second Circuit and the United States Supreme Court.

The only brief that I received of Hubert's was his brief to the Second Circuit which I felt was very good and which we plan to adopt in part in your case.

Ray Daniels address is: 85 Weybosset Street, Providence.



As I indicated, I spoke to LaRosa on Ed Sitko's case and he said that he would help out in any way possible. Other than that, I have not personally done anything in respect to the release of your Bond. Pursuant to a request from Ray Daniels, I asked Andy what the status of the Bond release was. He informed me that your papers had been made out but that he was waiting for Tom Zinni to have Nick's papers taken care of because of the cross-idemnification feature of the Bonds.

I have called Tom Zinni and left messages. I do not know what, if anything, he has done, however, I would assume that the Zinni family will be on him inasmuch as they want the release as much as you do. I can assure you that I will continue to haunt Tom Zinni and to expedite the release of the Bond.

I am finding it exceedingly difficult to fall off stools insofar as I have managed to break most of them in practically all of the barrooms in Providence. I am anxiously awaiting an anticipated reorder so that I can embark on a new career.

I will keep you posted.

Sincerely,

John A. O'Neill, Jr.

P.S. Andy has just informed me Mary has told him that Ray Daniels has collected close to $10,000 for work on the Appeal. I have not heard anything from Ray relative to this. Could you do what you can to straighten out this matter as to how the appeal is to be handled? And if you still want me to assist you in this appeal.

(H)

D. Coffey

I am writing this letter hoping that you will want to see justice done. I no longer feel I could be loyal to the "guilty men on the street that deceived me.

Men like Andrew Bucci Eduard Sitko and possibly Red Houle. I am now in fear of my life. David Gillette has let quite a few people read the statment i gave against him. I have been deceived by my former attorney Andrew Bucci.

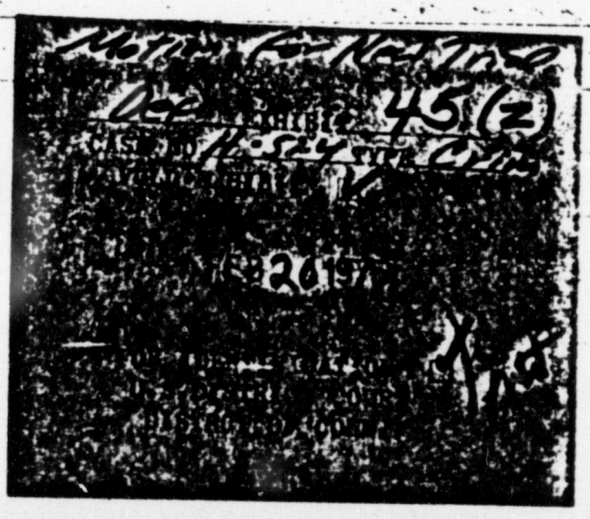
He has lead me down to the road of hell. Now i know why he sent David Gillette a copy of the statment i made. He must have known what would happen to me here. Most of the men here don't and won't talk to me.

Now for the last week David Gillette has been pressing me for a statment saying i lied about him in that statment. I know once i sign it i am done.

In the past i did not fully cooperate with the goverment, but now i am willing to do what i should have done in the first place.

The statment i gave before was prepared by my former partner + attorney. I pray you will consider my letter. Because Nicklas Sinni + I are not guilty of this horrible crime. Please help to have me moved from here. I fear every time i leave my cell somthing will happen to me. Sincerely William Morrasse

I do not want my present attorney to know of this letter.



September 1, 1974

Dear John

I received your letter dated aug 29, today as always it was real nice to hear from you. John thank for bringing me up to date it makes things easier knowing what is going on.

John about the money as i told Ray a while back as soon as our bail ordeal was taken care of i would start paying. All i have given Ray is three thousand, Two which as i under stand is. See the transcript.

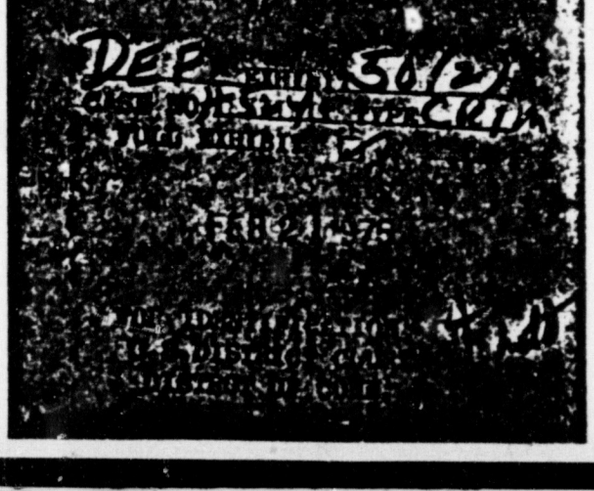
I pray between you and ~~y~~Ray you can get Tom Zinni to sign this release. I cannot at this time take a trip to Boston because the people here can't take a joke.

As soon as my Brother Ed gets the bank book i will arange with him to pay you directly. And of coase i still want you on this case.

Well John Keep me abreast of thing O.K. Say hello to everyone one for me.

Your Friend
Bill

P.S. Please Write



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September 21, 1974

Dear John

How is the duffer i mean golfer doing these days. Today Dave found out he was having a hearing Oct 2 or 3 before Judge Clarie on the finger print issue. Both he and Bobi will be present for the hearing. I would like you & Kay to attend the hearing. Because i am sure Judge ~~Murphy~~ Murphy will base his ruling on the out come of this hearing. Please write and let me know what happens. Are you staying off those bar stools.

Sincerly Yours
Bill

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RAYMOND R COIA
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JOHN J KELLY
STEPHEN E S HEALEY
SALVATORE L ROMANO

Nine Steeple Street
Providence, Rhode Island 02903

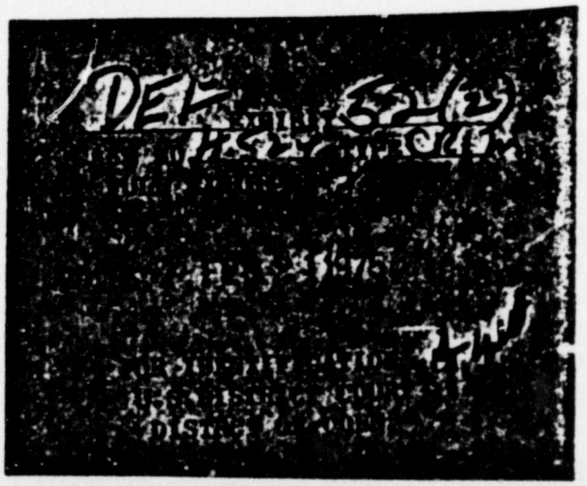
September 26, 1974

William Marrapese #97051
Box P M B
Atlanta, Georgia 30315

Dear Bill:

I have already talked to Hubert and made arrangements to go to Hartfo on Oct. 3, 1974. It is my information that Judge Clarie has set asid the 3rd and 4th for the hearing. I can only assume that the second date is the date that they will bring David out of Atlanta. I will let you know the results of the hearing.

Best regards,



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RAYMOND R. COIA
JAMES L. O'NEILL
JOHN J. KELLY
STEPHEN E. S. HEALEY
SALVATORE J. ROMANO JR.

October 21, 1974

Mr. William Marrapese #97051
Box P M B
Atlanta, Georgia 30315

Dear Bill:

We have received a release of the deed posted in your case. We will get the bankbook in a day or so. I've called Mary and she said to write you for instructions.

Ray has already received his money and it was my understanding that we were to be paid when the bankbook arrived.

Please advise.

Very truly yours,

John A. O'Neill, Jr.

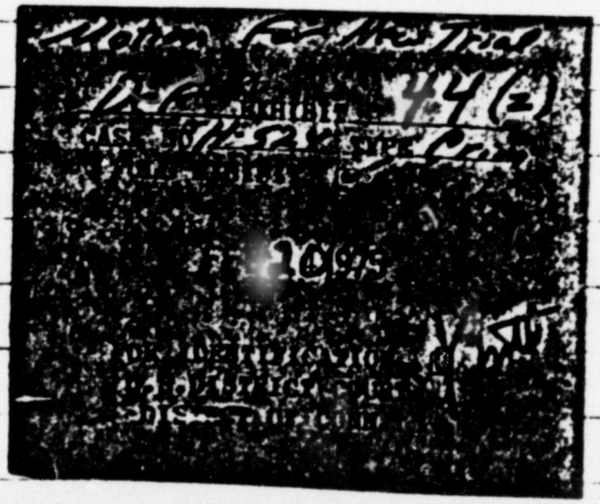
JAO:jb

Oct 25, 1974
Friday 9:15 AM

Dear John

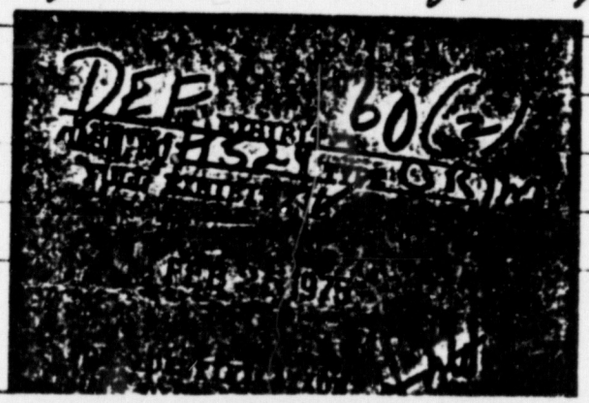
It was very nice of you to tell me about Monday's happening in your letter. About the Bank Book, when it is back with my ~~book~~ brother Eddy in Laud ask him to write me for instructions. You see John as of now I don't feel like I will be running away without paying you for your services. The letter you wrote me was very unkind. I have payed your office over $28,000.00 for past services and have never failed to pay when I was asked So when the book is given to Eddy, have him write me and I will make sure you get your "fuckin" money.

From a friend in need
Bill



Dear John

My sister Frances will be out to see me on or about the 15th of Nov. I will tell her to pay you as soon as she knows that the bank + Bank are back. She will pay you from her Account Your last letter sounded like a trust. If all the attorney's got together and done their jobs I would have had all this cleared up five months and you would have been paid long before this. So let the blame lay where it should & K. I received a letter from Ray C. telling me he was no longer in the office. Please tell me if any of this money is his. Or have you made some kind of agreement about this fee. Also C. Sperber was never paid yet in Hartford. John on that Giordano case cite 94 S. Ct. 1820 (1974) does that have any bearing on our case. They have the cite here but not the case. I was not at all supprised at Murphy ~~ruling~~ ruling. But if have now read the transcript and it appears he has his own rule about court cases. He just don't listen. Well I will await your return letter. Say hello to everyone at the office for me.



Your Loyal Friend
Bill

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TELEPHONE 751-9800
AREA CODE 401

Nine Steeple Street
Providence, Rhode Island 02903

October 31, 1974

Mr. William Marrapese #97051
Box P M B
Atlanta, Georgia 30315

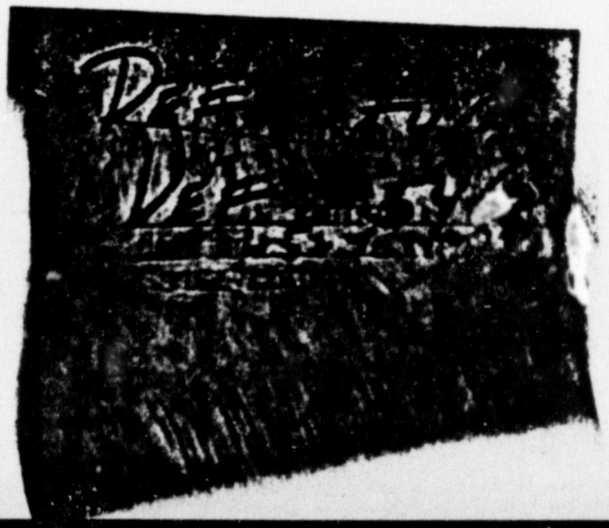
Dear Bill:

Andy told me that he had a talk with the bondsman who wants a letter from you authorizing turning over the bank book to him. Also, would you send us authorization to take the fee out pursuant to your arrangement with both Andy and myself.

Very truly yours,

John A. O'Neill, Jr.

JAO:jb



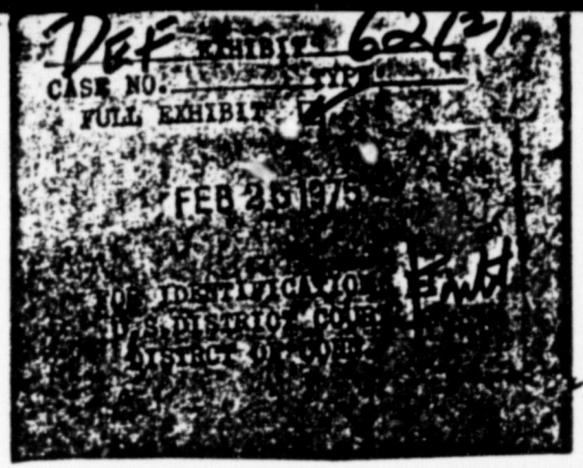
Nov 17, 1972

Dear Colin

In regard to our talk about J. Ida
that must be proven beyond the world
There is a fellow here who went before
the people on the same matter as Ida was
decided here the word. One case
you may look up is a 1972 case 2nd circ
Perez Vs U.S. it came down in Dec. 1972
if we in the Fed 2nd it would be a case
against us. There has been a lot of cas
in the so. new York. I don't know wer
the suits are but if I get any I will
write you again. Try to get something
will be done such as the mineola. A
are not trying to interfere but as you
know we are Auto specific. I will send any
we get from Perez here. Well
will talk to all from

Sincerely Yours
Ed

BEST COPY AVAILABLE



BUCCI, O'NEILL & COIA
COUNSELORS AT LAW

November 25, 1974

Mr. William Marrapese #97051
P. O. Box 1000
Marion, Illinois 62959

Dear Bill:

You're on the ball! I had read the Plisico case. For your information, it is 339 F.Supp. 1077 and it was decided by Judge Travia. Your second letter prompted a special visit to the library when I found that Franezee case about 1/2 hour before receiving your letter. Both these cases are greatly distinguishable from the current matter for reasons I will explain later. Thank God we brought Housand before the U.S. District Attorney almost immediately upon his arrival. In the Franezee case an attorney, Abrams, took the tape, and the witness recarded a second time and the attorney was indicted - subsequently acquitted.

As you may have heard by now, last Thursday Andrew was forced by an arrest warrant that had been issued by Judge Clairie, to bring John to Hartford. Judge Clairie held him on $100,000 bail for David and Robert's hearing on December 2nd in Hartford.

Andrew received a letter from Housand this morning indicating that he is in fear of the Government. Also, Andrew and I were both subpoened to appear in front of a Grand Jury in Hartford on the 3rd of December.

I'm just thumb-nailing the information now; will explain more fully later. Enclosed please find summaries of what Housand told us.

Sincerely,

John A. O'Neill, Jr.

Enclosures
JAO:jb

Hartford, Connecticut
December 17, 1974

I, William Louis Marrapese, beind duly sworn hereby furnish the following voluntary sworn signed statementto Robert W. Moretta and William D. Saunders who have identified themselves to me as Special Agents of the Federal Bureau of Investigation. I am furnishing this statement as the result of a letter I wrote to Mr. Paul Coffey, United States Task Force Attorney, Hartford,Connecticut, which is dated September 1, 1974.

I am 37 years of age, and am currently serving a life sentnence which arose out of a conviction I received in connection with the murder of Daniel La Polla, a former government witness.

Sometime during the first two weeks in September,1974 I was visited by Attorney Andrew Bucci while I was confined to the prison hospital at the Atlanta Penitentiary,Atlanta,Georgia. Mr. Bucci told me at this time he was pretty sure he could locate John Housand,who was a witness for the government in my recent trial,and he was sure that for the sum of $15,000 to $20,000 he could get Housand to change his prior testimony. I told Mr. Bucci to go ahead with this and I would also be willing to have him do it, even if it cost me more money/. Mr. Bucci however, did not tell me what his own fee would be, but said he would contact me later on. Mr. Bucci only stayed with me about 20 minutes and I can not state whether he remained in Atlanta Georgia or whether he returned immediately to Providence, Rhode Island.

I, also recall the following dayafter Mr. Bucci's visit, I told David Guillette, who was working in the X-Ray room at Atlanta Penitentiary w/MR about Mr. Bucci's visit and what he had said to me concerning John Housand's willingness to change his story. David Guillette at this time wanted to know how come I didnot call himto tell him about Bucci's visit, to which I replied Bucci only stayed 20 minutes and I did not have time to contact him. David Guillette appeared to be very happy when he heard this news about my conversation with Mr. Bucci and wanted me to give him more details. I told him that I didnot have any more details at this time, but that Mr. Bucci was going to keep in touch with me.

On November 5, 1974 I was transferred to the Marion, Illinois Federal Penitentiary arriving there on November 7, 1974. I recall that approximately one week later on a Friday, November 15, 1974, Mr. Bucci's law partner, who is my attorney, Mr. JohnO'Neill vistied me and said " I just left a friend of yours, John Housand." Mr. O'Neill told me that John Housand was in Providence Rhode Island with Andrew Bucci. He also told me that he allowed John Housand use of h is Mercedes automobile. Mr. O'Neill also said that JOhn Housand wanted his wife to be with him, and that while Housand was in Providence he had to be " Housand's baby sitter.

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Mr. O'Neill also said that John Housand had prepared a tape recording as soon as he arrived in town and had also made a tape recording which was four hours lohg which was made before the United States Attorney in New Haven, Connecticut, wherein John Housand had changed his prior testimony. Mr. O'Neill also told me that Andrew Bucci wanted $7,000.00 to give to John Housand because he was broke. I told Mr. O'Neill to contact my wife and have her arrange to withdraw $7,000.00 from my sister's bank account at the Industrial National Bank, Elmwood Branch, Elmwood AVenue, Providence Rhode Island. I wish to state that although my sister, Mrs Frances Laprocina has this account in her name, all the funds in this account belong to me. Mr. O'Neill agreed to do this and made no mention at the time of further payments, but said he would keep in touch with me. He stayed with me just a short while, and said he had to leave on a 3:25 pm flightto ST. Louis, Missouri where he would make connections for Rhode Island. I believe Mr. O'Neill was traveling on Ozark Airlines while enroute to St. Louis, Missouri. Before he left I instructed Mr. O'Neill to proceed directly to my house where my wife would see to it that he received the $7,000.00 dollars.I recall that either on Friday NOvember 15, 1974 or on Monday November 18, 1974, Mr. O'Neill proceeded to the Industrial National Bank with my wife and my sister, Mrs Frances Laprocina, whereupon she withdrew $7,000.00 from the bank account I referred to above. My wife later told me that in the presence of the bank manager, a Mr. James Neary, handed Mr. John O'Neill $7,000.00 in cash. W.M. No receipt was given, however, I subsequently received a couple of letters from Mr. O'Neill wherein he referred to previous cases involving the changing of testimony of witnesses. I recall that I also sent Mr. O'Neill several cases I researched in the prison library, where attornies were indicted in similar cases.

I arrived in New Haven ,Connecticut on December 3, 1974, for my appearance in Hartford,Connecticut before a Federal Grand Jury on December 4, 19774. I recall that on December 4, 1974, Mr. Andrew Bucci vistied mein the lockup at the United States Marshal's Office, Hartford,Connecticut. Mr. Bucci told me at this time that if I was asked by my attorney, Ray Daniels, about whether I had given Mr. Bucci any money for Mr. Housand, that I was to tell him that I only gave him $500.00 to cover John Housand's expenses. Mr. Bucci also told me he had been in the Federal Grand Jury room for three hours, and that Mr. John O'Neill had been there for two hours.

On December 11, 1974, while again in the United States Marshal's lockup in Hartford,Connecticut, I was with Robert Joost,Nicholas Zinni and David Guillette, at which time I told them that I gave Mr. O'Neill a lot of money to get John Housand to change his prior testimony. I asked David Guillette, how much money he gave John HOusand to which he replied, $700.00 dollars. Robert Joost, being angry at me, said nothing, and neither did Nicholas Zinni. W.M.

I recall that at this time,Attorney James Wade, came into the lockup and after reading the grand Jury indictments to us, I overheard Robert Joost remark "They indicted Pelligrino and Gibson because they came to see me in jail and also because they knew we were paying Housand off to get him to change his testimony.

W.M.

On September 25, 1972, on a Monday, I had a meeting with Robert Joost, David Guillette, Edward Sitko and Andrew Bucci in Andrew Bucci's Law Firm Library. At this meeting we all discussed evidence gathered in our defense in the ATF Gun Case. We all indicated that we had a hard time trying to locate the Government's witness, Daniel LaPolla, to which Andrew Bucci remarked," If you cna't find him, let him find you." I also recall a meeting with David Guillette sometime in July 1972 in David Guillette's house, whereupon David Guillette told me he would like to get rid of Daniel LaPolla.

I also recall that on April 15, 1973, David Guillette, Edward Sitko and myself had a meeting in Amando's REstaurant located in Steeple Street, Providence, Rhode Island. After commenting to DAvid Guillette and Edward Sitko about a news article I was reading concerning a letter bomb, Edward Sitko remarked that it would have been easier to have killed LaPolla in this fashion. Edward Sitko also went on to tell how he removed the right window in the rear of Daniel LaPolla's house, and after removing some burlap which was inside the window, David Guillette upon entering Daniel LaPolla's house, noticed a very bad odor. DAvid Guillette said that once inside the house he suspended a wire coat hanger from the top of the front door to which was attached a bomb. David Guillette said he had a tough time driving a nail into the floor. While inside Daniel LaPolla's house, Edward Sitko and one Red Houle were standing outside the house as lookouts. After David Guillette planted the bomb and left the house Edward Sitko replaced the window and packed dirt around the screw heads. W.M.

I have read the above statement consisting of this page and two other pages and declare the same is true and correct to the best of my knowledge and belief

William "Marrapese
12/17/74

Sworn to and Subscribed before me:
Robert N. Moretta Special Agent
F.B.I., Hartford Conn., 12/17/74

Witnessed by: Willeme D. Saunders, Special Agent
F.B.I., Hartford, Connecticut 12/17/74

Hartford, Connecticut
December 18, 1974

I, William Louis Marrapese, being duly sworn hereby furnish the following voluntary sworn signed statement to Robert W. Moretta and William d. Saunders who have identified themselves as Special Agents of the Federal Bureau of Investigation. I am furnishing this statement as the result of a letter I wrote to Mr. Paul Coffey, United States Attorney's Office Hartford, Conn; which is dated September 1, 1974. I am also furnishing this statement in conjunction with a previous sworn signed statement I gave on December 17, 1974.

I wish to state that while Attorney John O'Neil visited me at Marion Illinois Penitentiary

that he told me that his partner Andrew Bucci had located John Housand and that Housand had recanted his prior testimony. O'Neil said that John Housand had been calling Attorney Andrew Bucci on the telephone about five or six times and finally Bucci had one of his employees, a young law associate, tape a phone conversation with John Housand. This conversation, according to Mr. O'Neil, was also overheard by Jacqueline Bealieu, Mr. Bucci's secretary. Mr O'Neil said that the reason Mr. Bucci taped the conversation was that he did not trust John Housand. However, I know that the reason Mr. Bucci taped John Housand's telephone conversation was because he wanted it to appear that John Housand on his own had

contacted Mr. Bucci first when in fact Mr. Bucci and his friends had first contacted John Housand to get him to change his testimony.

I would prefer at this time not state whether the money paid to John Housand to recant his testimony was paid to get him to change previous truthful testimony to untruthful or false testimony or vice versa.

I have read the above statment consisting of this page and two preceding pages and declare same is true and correct to the best of my knowage and belief

William Parrapese
Dec 18, 1974

Sworn to and subscribed before me on
12/18/74

Robert W. Moretti Special Agent F.B.I.
Hartford, Conn.

Witnessed by
William D. Saunders Special Agent, F.B.I.
Hartford, Ct.
12/18/74

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED

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U. S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES OF AMERICA,	
Plaintiff,	
vs.	Cr. No. H-524
WILLIAM MARRAPESE, et al.,	ORDER AMENDING JUDGMENT OF CONVICTION.
Defendants.	

Defendant Marrapese having moved, by petition filed July 1, 1975, for a reduction of his sentence pursuant to Rule 35,

Now, on such petition, and on reading and filing the letter of Paul E. Coffey, Special Attorney, U.S. Department of Justice, dated July 25, 1975, recommending that defendant Marrapese's motion be granted on the ground that Marrapese's cooperation with the Governme[illegible]is been substantial and significant, and on reading and not filing a copy of Marrapese's testimony before the grand jury in this District on January 31, 1975, and on reading a copy of the transcript of Marrapese's testimony before the Honorable T. Emmet Clarie, Chief Judge, on February 19, 20, 21 and 25, 1975, in the matter of United States of America v. David Gillette, et al., Criminal Action No. H-524, and reading copies of various reports of Federal agents relating to interviews with Marrapese,

It is ORDERED that the judgment of Marrapese's conviction, dated June 26, 1974, in Cr. No. H-524 be and

the same is hereby amended so as to read:

"The defendant, William Marrapese, is committed to the custody of the Attorney General or his authorized representatives for a period of six years on each Count numbered I and III and five years on Count II, and that such sentences on each Count be served concurrently with each other."

Thomas F. Murphy
Senior United States District Judge

Dated: Waterbury, Ct., August 4, 1975.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
vs.	:	CRIMINAL NO. H-524
DAVID GUILLETTE and ROBERT JOOST	:	

OFFER OF PROOF RE: CROSS-EXAMINATION OF MARRAPESE CONCERNING RECANTATION OF JOHN ANTHONY HOUSAND AND PRESENTATION OF EVIDENCE CONCERNING SAID RECANTATION

I

By way of cross-examination of William L. Marrapese the defendants, DAVID GUILLETTE and ROBERT JOOST, will elicit the following:

1. That Marrapese was convicted after a jury trial before Judge Murphy in June 1974 and sentenced to a term of life imprisonment.

2. That the key Government witness at the trial was John Anthony Housand who testified inter alia that Marrapese, JOOST, GUILLETTE, Bucci and Zinni met at Carter's Jewelry Store or American Universal Gold Buyers between 10-11:00 A.M. and Housand agreed to kill LaPolla for $5,000.00. (What Housand testified to concerning this incident in Marrapese's presence is admissible under Rule 804 of the Federal Rules of Evidence.)

3. That Marrapese met with prosecutor Coffey and federal and state law enforcement officers on September 10-11, 1973 and gave

a 30 page statement. Marrapese told the federal and state agents inter alia that he had met Housand only once on May 4, 1972 after the M-16 arraignment. Marrapese will further testify that he denied to the federal authorities that a meeting took place on May 8, 1972 or thereafter and no agreement was made to hire Housand to kill LaPolla.

4. That Marrapese told his lawyer, Andrew Bucci, that Prosecutor Coffey did not believe him and that he would receive no consideration for his "cooperation."

5. That in August 1974 after his conviction and sentence of life imprisonment Marrapese was transferred to the Federal Penitentiary, Atlanta. While there Marrapese told an inmate, Frank Klein, that he told a story once that didn't work but this time he would succeed. Marrapese then asked Kleins advice as to the following plan: if he, Marrapese, testified against certain persons and received a reduced sentence in return for his testimony and thereafter signed an affidavit recanting his testimony, whether his reduced sentence would still be in effect and whether the persons against whom he testified would receive a new trial.

6. That in November 1974, John Housand recanted his testimony at Marrapese's trial.

7. That in early December 1974, a grand jury was convened to investigate the Housand recantation. Marrapese was called before the grand jury on or about December 6, 1974 and invoked the fifth amendment.

8. That on December 17, 1974, Marrapese signed a written statement to the FBI that Housand's recantation was corruptly obtained by his attorney, Andrew Bucci, and that Marrapese paid Bucci's law partner $7,000 for his efforts in obtaining the recantation.

9. That during the period August-November 1974, Marrapese sent a number of letters to Marrapese's law partner, John O'Neil, that clearly indicate that the $7,000.00 paid to O'Neil was for unpaid legal fees. (These letters were introduced as exhibits at the new trial hearing before Judge Clarie.)

10. That in January 1975, Marrapese for the first time told federal officials that the May 8th meeting did occur and that an agreement was reached to kill John Housand for $5,000.00.

II

In its case in chief the defense will offer Housand's testimony before the grand jury in December 1974 wherein he testified his trial testimony was perjurious (This testimony is admissible under Rule 804.)

III

From the foregoing the defense will argue in summation:

1. That Housand lied about the May 8, 1972 meeting.

2. That the only way Marrapese could convince Prosecutor Coffey he was telling the truth was to corroborate Housand. When Marrapese attempted to convince Coffey in his statement of September 11, 1973 that he had met Housand only once on May 8, 1972, Coffey did not believe him.

3. The Housand recantation gave Marrapese an opportunity to put a plan into effect that he had discussed with Frank Klein in Atlanta, to wit: to concoct a story that Bucci corruptly obtained the recantation (see offer of proof re: testimony of C. Thomas Zinni - "Coffey hates Bucci") and thereby receive a reduced sentence.

4. That the letters Marrapese sent to O'Neil from August-November 1974 demonstrates that Marrapese is lying about his and Bucci's part in the recantation.

Dated at Hartford, Connecticut, this 27th day of October, 1975.

The Defendant
DAVID GUILLETTE

By _____
HUBERT J. SANTOS

The Defendant
ROBERT JOOST

By _____
JAMES A. WADE

C E R T I F I C A T I O N

This is to certify that a copy of the foregoing has been mailed to Paul E. Coffey, Esq., Special Prosecutor, United States Department of Justice, 450 Main Street, Hartford, Connecticut.

_____
HUBERT J. SANTOS

_____
JAMES A. WADE

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
vs.	:	
		CRIMINAL NO. H-524
DAVID GUILLETTE and ROBERT JOOST	:	
	:	

MOTION TO DISMISS INDICTMENT OBTAINED THROUGH THE TESTIMONY OF A PERJURER

The defendant., DAVID GUILLETTE and ROBERT JOOST, move to dismiss the indictment against them on the ground that it was obtained as a result of the testimony of John A. Housand, whom the court has found to be a perjurer and whose psychiatric history was not disclosed to the grand jury. As a result, the indictment returned by the grand jury is tainted and is not the result of a full and fair presentation of all relevant evidence to an impartial grand jury in violation of the rights guaranteed by the Fifth Amendment.

Dated at Hartford, Connecticut this 30 day of May, 1975.

DAVID GUILLETTE

By Hubert J. Santos

Hubert J. Santos
Buckley & Santos
51 Russ Street
Hartford, Connecticut

federal grand jury and admitted that his testimony at the trials

ROBERT JOOST

By James A. Wade

James A. Wade
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut

CERTIFICATION

I hereby certify that a copy of the foregoing motion was mailed to Paul Coffey, Special Attorney, Department of Justice, 450 Main Street, Hartford, Connecticut; C. Thomas Zinni, Esq., 53 Mt. Vernon Street, Boston, Massachusetts 02103; and Andrew A. Bucci, Esq., 9 Steeple Street, Providence, Rhode Island, this 30 day of May, 1975.

James A. Wade

James A. Wade

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
vs.	:	
		CRIMINAL NO. H-524
DAVID GUILLETTE and ROBERT JOOST	:	
	:	

MOTION TO DISMISS INDICTMENT OBTAINED THROUGH THE TESTIMONY OF A PERJURER

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Dated at Hartford, Connecticut this 30 day of May, 1975.

DAVID GUILLETTE

By Hubert J. Santos

Hubert J. Santos
Buckley & Santos
51 Russ Street
Hartford, Connecticut

ROBERT JOOST

By James A. Wade

James A. Wade
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut

CERTIFICATION

I hereby certify that a copy of the foregoing motion was mailed to Paul Coffey, Special Attorney, Department of Justice, 450 Main Street, Hartford, Connecticut; C. Thomas Zinni, Esq., 53 Mt. Vernon Street, Boston, Massachusetts 02103; and Andrew A. Bucci, Esq., 9 Steeple Street, Providence, Rhode Island, this 30 day of May, 1975.

James A. Wade

James A. Wade

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CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
vs.	:	CRIMINAL NO. H-524
	:	
DAVID GUILLETTE and ROBERT JOOST	:	
	:	

MOTION FOR INDIVIDUAL EXAMINATION OF PROSPECTIVE JURORS AND FOR ADDITIONAL PREEMPTORY CHALLENGES

The defendants, DAVID GUILLETTE and ROBERT JOOST, respectfully move pursuant to the Fifth Amendment to the United States Constitution that they be permitted through their respective attorneys to conduct individual void dire examination of prospective jurors and that they be granted additional preemptory challenges of said jurors.

In support of said motion, these defendants claim:

1. The issues and facts of this case are extremely complex and the possible punishment in the event of conviction is extremely grave.

2. In view of the previous trials of these defendants and that of Messrs. Marapese and Zinni, there has been intensive newspaper coverage of this case throughout the state.

3. It is imperative that these defendants be permitted to examine prospective jurors individually to determine the extent, if any, of their prior knowledge of the case, their opinion, if any, as to the guilt or innocence of these defendants and their knowledge and understanding of the legal issues relating to the

Motion denied for
reasons stated in
open court, following argument
So Ordered

Hon. T. Emmet Clarie
U.S.D.J.
10/22/75

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U.S. DIST. COURT
BRIDGEPORT, CONN.
'75 OCT 22 PM 1 42

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
vs.	:	CRIMINAL NO. H-524
	:	
DAVID GUILLETTE and ROBERT JOOST	:	
	:	

MOTION TO DISMISS INDICTMENT OBTAINED THROUGH THE TESTIMONY OF A PERJURER

The defendants, DAVID GUILLETTE and ROBERT JOOST, move to dismiss the indictment against them on the ground that it was obtained as a result of the testimony of John A. Housand, whom the court has found to be a perjurer and whose psychiatric history was not disclosed to the grand jury. As a result, the indictment returned by the grand jury is tainted and is not the result of a full and fair presentation of all relevant evidence to an impartial grand jury in violation of the rights guaranteed by the Fifth Amendment.

Dated at Hartford, Connecticut this 14TH day of October, 1975.

DEFENDANT DAVID GUILLETTE

By Hubert J. Santos

Hubert J. Santos
His Attorney
Buckley & Santos
51 Russ Street
Hartford, Connecticut

testimony. The grand jurors deliberated briefly and returned [illegible] committed perjury and his demeanor evidence was particularly

DEFENDANT ROBERT JOOST

By James A. Wade

James A. Wade
His Attorney
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut

CERTIFICATION

I hereby certify that a copy of the foregoing motion was mailed to Paul Coffey, Special Attorney, Department of Justice, 450 Main Street, Hartford, Connecticut; C. Thomas Zinni, Esquire, 53 Mt. Vernon Street, Boston, Massachusetts 02103; and Andrew Bucci, Esquire, 9 Steeple Street, Providence, Rhode Island, this 14TH day of October, 1975

James A. Wade

James A. Wade

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
vs.	:	CRIMINAL NO. H-524
DAVID GUILLETTE and ROBERT JOOST	:	
	:	

MOTION TO DISMISS INDICTMENT BECAUSE OF MISCONDUCT OF A GOVERNMENT AGENT TO WIT: JOHN A HOUSAND

Pursuant to the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution, the defendants, David Guillette and Robert Joost move to dismiss the indictment against them on the ground that a second trial of them on such indictment is barred for the following reasons:

1. At their original trial the key government witness against them was one John Anthony Housand, who, at the time of such trial, was an agent, servant or employee of the United States of America in that he was then receiving from the government money, goods, services and other considerations in return for his sworn testimony.

2. At such trial the said, John Anthony Housand, knowingly and wilfully perjured himself in a material way to the detriment of these defendants.

3. Such perjured testimony prevented these defendants from having the issue of their guilt or innocence fully and fairly presented to and resolved by a single jury.

4. As a result, at least in part of the perjury by the said John Anthony Housand, on April 18, 1975, the United States District Court for the District of Connecticut set aside the verdict and judgment of guilty against these defendants and ordered a new trial of them.

5. The setting aside of the verdict and judgment of guilty in their first trial is not the result of any acts or failures to act on the part of these defendants but is the result of the perjury of a paid government witness.

6. Therefore, these defendants having once been put in jeopardy, a retrial of them constitutes a violation of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

Dated at Hartford, Connecticut, this 30 day of May, 1975.

DAVID GUILLETTE

By Hubert J. Santos

Hubert J. Santos
Buckley & Santos
51 Russ Street
Hartford, Connecticut

ROBERT FOOST

By James A. Wade

James A. Wade
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut

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whether the acquittals may restrict admissibility of evidence

CERTIFICATION

I hereby certify that a copy of the foregoing motion was mailed to Paul Coffey, Special Attorney, Department of Justice, 450 Main Street, Hartford, Connecticut; C. Thomas Zinni, Esq., 53 Mt. Vernon Street, Boston, Massachusetts 02103; and Andrew A. Bucci, Esq., 9 Steeple Street, Providence, Rhode Island, this 29 day of May, 1975.

James A. Wade

James A. Wade

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

vs. :

CRIMINAL NO. H-524

DAVID GUILLETTE and ROBERT JOOST :

MOTION TO DISMISS BECAUSE OF WILFUL NON-DISCLOSURE OF BRADY MATERIAL BY THE PROSECUTING ATTORNEY

The defendants, DAVID GUILLETTE and ROBERT JOOST, move that the indictment against them be dismissed on the ground that the government attorney in their first trial wilfully failed to turn over to them psychiatric data relative to John A. Housand which cast light on his credibility and constituted Brady material in violation of the order of this court. In support of said motion these defendants represent to the court as follows:

1. Subsequent to the so-called Noblemet hearing but prior to Housand's testimony before the jury the prosecuting attorney, Paul Coffey, came into possession of certain court martial records which included a medical diagnosis that Housand was legally competent but also that he had a "personality disorder, namely, emotional instability reaction, manifested by implusive acts, emotional liability, and poorly controlled hostility with anxiety and guilt feelings".

2. Mr. Coffey testified that he read and understood this report, that he was aware of the rule derived from Brady v. Maryland and its progeny, that he was aware of this court's order to turn over Brady material to the defense and that he made a legal and intellectual judgment that this information did not constitute Brady material.

3. As a result of such legal and intellectual judgment, Mr. Coffey failed to turn said material to the defense.

4. Such failure constituted a wilful non-disclosure of Brady material in violation of this court's order and the Due Process Clause of the Fifth Amendment.

Dated at Hartford, Connecticut this 30 day of May, 1975.

DAVID GUILLETTE

By Hubert J. Santos

Hubert J. Santos
Buckley & Santos
51 Russ Street
Hartford, Connecticut

ROBERT JOOST

By James A. Wade

James A. Wade
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut

killing was discussed. When a person in those circumstances

CERTIFICATION

I hereby certify that a copy of the foregoing motion was mailed to Paul Coffey, Special Attorney, Department of Justice, 450 Main Street, Hartford, Connecticut; C. Thomas Zinni, Esq., 53 Mt. Vernon Street, Boston, Massachusetts 02103; and Andrew A. Bucci, Esq., 9 Steeple Street, Providence, Rhode Island, this 30 day of May, 1975.

James A. Wade

James A. Wade

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
v.	:	CRIMINAL NO. H-524
DAVID GUILLETTE and ROBERT JOOST	:	

MOTION FOR JUDGMENT OF ACQUITTAL AND TO DISMISS

Pursuant to Rule 29(c) of the Federal Rules of Criminal Procedure, Title 28, Section 2255 of the United States Code, the fifth, sixth and eighth amendments to the Constitution of the United States, the defendants, DAVID GUILLETTE and ROBERT JOOST, respectfully request this Court to order a judgment of acquittal and/or dismiss the indictment for any one of the following reasons:

I. THE INDICTMENT AGAINST THESE DEFENDANTS WAS RETURNED IN VIOLATION OF THE HOLDINGS IN UNITED STATES V. ESTEPA, 471 F.2d 1132 (2 CIR. 1972) AND UNITED STATES V. GALLO, 17 Cr. L 2283, 2432 (DC CONN 1975; ZAMPANO, J.)

1. On June 14, 1973, these defendants were indicted by a federal grand jury.

2. The evidence relied upon by the Government for the return of the June 14, 1973 indictment rested primarily upon the testimony of John Anthony Housand who personally appeared before the grand jury.

3. On January 9, 1974, the defendants were convicted on all counts of the indictment and thereafter were sentenced to terms of life imprisonment. Their conviction rested primarily upon the testimony of John Anthony Housand.

4. On or about December 1974, Housand appeared before a federal grand jury and admitted that his testimony at the trials of GUILLETTE, JOOST, Marrapese and Zinni was perjurious.

5. In March 1975, William L. Marrapese appeared before a federal grand jury and inculpated himself, his co-defendants, Andrew Bucci, Edward Sitko and Red Houle in the plot to kill LaPolla.

6. On April 19, 1975, GUILLETTE, JOOST and Zinni were granted new trials. The District Court (Clarie, J.) found that Housand had perjured himself in material respects at the prior trial and that the Government negligently failed to disclose Brady material, to wit: evidence of Housand's past psychiatric treatment.

7. Thereafter, Andrew Bucci was indicted by a federal grand jury for violation of 18 U.S.C. §241. In seeking the indictment of Bucci, the Government relied primarily upon the testimony of Marrapese who appeared before the grand jury in March 1975.

8. Despite Marrapese's appearance before the grand jury in March 1975, the Government did not seek a new indictment against GUILLETTE, JOOST and Zinni but relied upon the June 14, 1973 indictment.

9. Prior to this trial defendants GUILLETTE and JOOST made repeated demands that a new indictment be sought so that the grand jury could assess Marrapese's credibility.

10. Since no new indictment was sought against GUILLETTE, JOOST and Zinni, no grand jury has been advised in their cases of Housand's admitted perjury.

11. Thus, the defendants GUILLETTE, JOOST and Zinni were tried on an indictment that may have been founded on perjured testimony. Recently, Judge Zampano considered this precise issue, i.e., what is the remedy when an indictment is returned on the basis of testimony that may be perjurious. United States v. Gallo, supra (copy attached). The prosecutor in the Gallo case, Mr. Paul E. Coffey, failed to advise a second grand jury which was convened for the purpose of obtaining a superseding indictment that the key Government witness had admitted that he perjured himself during his first grand jury appearance. In dismissing the indictment, Judge Zampano said:

> Second, the prosecutor failed to alert the second grand jury that the transcripts upon which it was to base an indictment were permeated with perjurious statements as to crucial, material events. Buckley's false testimony before the first grand jury poisoned the waters of evidence. This impurity could be removed only with careful and conscientious deliberation by the jurors. *** While the first grand jury was fully aware of the discrepancies in Buckley's testimony before it returned the original indictment, it cannot be assumed that the second grand jury recognized that portions of the evidence before it were tainted. This stain of falsehood should have weighed heavily in the balance before the second indictment was returned. The defendants cannot be permitted to stand trial on an indictment which to the government's knowledge may have been founded on perjured testimony. (emphasis supplied)

12. In the instant case it was incumbent upon the prosecutor to do one of the following once a new trial was ordered:

a. Convene a new grand jury and present live testimony from Marrapese. The irony here is that Marrapese appeared before a grand jury in March 1975 but no request was made to indict GUILLETTE, JOOST and Zinni.

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b. Convene a new grand jury and submit to it a transcript of Housand's original grand jury testimony and his recanted version. Of course, Housand's personal appearance would be most desirable.

and Marrapese and Housand should have been both called or the above referred to transcripts submitted if Housand elected to invoke his fifth amendment privilege.

14. It is the prosecutor's duty to present all relevant evidence to the grand jury, including evidence which he knows will tend to negate guilt. ABA Standard Relating to the Prosecution Function and the Defense Function. Section 3.6 at 88 (March 1970). No grand jury was ever asked to consider Housand's recantation in the cases of GUILLETTE, JOOST and Zinni. Had Mr. Coffey convened a grand jury and failed to disclose Housand's recantation, he would be in violation of the ABA Standard noted above. He cannot escape violation of the standard by his failure to convene a new grand jury particularly in light of Marrapese's appearance in March 1975.

II. THE DEFENDANTS SHOULD NOT BE SUBJECT TO A THIRD TRIAL FOR THE REASON THAT THE LENGTHY PROCEEDINGS IN THIS CASE HAS BEEN BY GOVERNMENT MISCONDUCT.

1. On April 19, 1975, Judge Clarie granted a new trial in part because of violations of Brady v. Maryland.

2. Had the first jury been advised of Housand's psychiatric history, it may have acquitted or, at the least, failed to reach a verdict.

3. A substantial number of jurors in this case concluded that the Government failed to prove the defendants guilty beyond a reasonable doubt and acquitted some defendants outright on some counts.

BUCKLEY & SANTOS
ATTORNEYS AT LAW
31 RUSH STREET

4. The Government's proof rested primarily upon the testimony of Marrapese, a witness with serious credibility problems.

5. The defendants have been incarcerated since June 16, 1973. The defendant GUILLETTE attempted to hang himself after the first trial; the defendant JOOST has developed serious intestinal problems.

6. The defendants personal lives have been ruined or seriously jeopardized.

7. In the course of these proceedings Government agents and prosecutors have:

a. Thrown out, converted to their own use or destroyed possible exculpatory evidence (e.g. Agent Murphy at the Noblemet hearing);

b. Submitted a scientific report as the basis for a search warrant which report and conclusion was totally false (e.g. 41 strand wire count report of Dr. Byall);

c. Suggested to Housand he could receive $5,000.00 for his cooperation but never disclosed same to the defense (Agent Fowler's testimony at new trial hearing);

d. Failed to disclose a critical fingerprint report by Officer James McDonald;

e. Continuously failed to disclose exculpatory material unless ordered by the Court or disclosed same in an untimely fashion (e.g. Souca statement, Marrapese statement, Robert Brown statement);

KLEY & SANTOS

f. Relied on the testimony of Housani without checking into his psychiatric background; relied on the testimony of Marrapese without interviewing his psychiatrist until after he took the stand;

g. Failed to check out the Souca story properly (see affidavits on file) and denied the existence of a Crossroads Lounge. (see affidavit)

8. In light of all of this, to require these defendants to stand trial a third time will violate their rights to due process and subject them to cruel and unusual punishment.

Dated at Hartford, Connecticut, this 22nd day of September, 1975.

THE DEFENDANT
DAVID GUILLETTE

By Hubert J. Santos
HUBERT J. SANTOS

THE DEFENDANT
ROBERT JOOST

By James A. Wade
JAMES A. WADE

C E R T I F I C A T I O N

This is to certify that copies of the foregoing motion have been mailed to Paul E. Coffey, Esq., Special Attorney, United States Department of Justice, 450 Main Street, Hartford, Connecticut; Andrew Bucci, Esq., 9 Steeple Street, Providence, Rhode Island, 02903 and C. Thomas Zinni, Esq., 53 Mount Vernon Street, Boston, Massachusetts, 02108.

Hubert J. Santos
HUBERT J. SANTOS

James A. Wade
JAMES A. WADE

at he admonished appellant about discussing the case
out appellant persisted. [*End Text*] —Hays, J.

[*Text*] An examination of the record leaves me ex-
turbed with the majority's analysis of two important
this case. The immense tragedy out of which this
se cannot negate constitutional safeguards which
defendants alike. [*End Text*]

ority casually disposes of the custody question by
there is substantial testimony to support the find-
ier of fact, but the nature of this "substantial
ot related to us in the majority's opinion nor is it
in the record.

review of the "relevant circumstances" leads me to
sion that the defendant was sought at the hotel as
a mere witness and, in fact, was effectively taken into
Officer Adams just after Sgt. Lingham directed him
ior to the police station for a statement. • • •

d discloses what I conclude to be a juvenile sudden-
ed with the overwhelming machinery of law enforce-
adually disintegrates from a state of fright to a feel-
air and frustration. He was emotionally unable to
e seasoned skills of his opponents ... debate on his
home ground. It would be extremely difficult for a
n one who had prior encounters with the police, to
at it might be in his best interests to remain silent
suspicion for the murder of more than a dozen peo-
confronted with the slightest incriminating evidence
ch as this a youth would instinctively feel compelled
an alibi, whether guilty or not, lacking the maturity
d "constitutional rights." A juvenile's natural in-
stand the significance of his "rights" would be
y the existence of an unusually low level of
nd submoral intelligence, such as the defendant's.
voluntariness of any waiver is further questioned
terrogations are conducted in the dead of night by
perienced police officers.

ication of Taylor's state of mind during these in-
is provided by the fact that almost everything the
said was inconsistent with something he had
ated, sometimes only seconds before. In his naivete
t's overriding concern was when he was going to be
o home. The defendant in this case was questioned
nuously by at least eight different police officers
department official for almost seven hours through
d early hours of the morning, from approximately
til 9:40 a.m. Even without the additional considera-
me of day during which questioning was conducted,
of education, subnormal intelligence and coercive
the police, any alleged waiver by a juvenile in the
counsel or parents during questioning of that dura-
e suspect. • • •

concluded on the basis of the "totality of cir-
" present in this case that statements made by the
fter Gassaway re-entered the interview room after
oggins were "the product of a will overborne" by a
ironment and coercive conduct by law enforcement
violation of Taylor's Fifth, Sixth, and Fourteenth
rights. This determination in no way represents
on my part of the defendant's version of what oc-
e Tucson Police Station the morning of December

s of the fire and its aftermath, horrible as they un-
are not sufficient to nullify that calm and judicial
of the rights of an individual to a fair trial, let
e of the mental capacity of the defendant, even if
rcement officers believes that he was guilty of caus-
ocast. The case should be decided either on the
of those constitutional principles guaranteed to all
e majority's failure to recognize this obviously en-
e sort of police misconduct and disregard for
chts that occurred in this case. [*End Text*]
J.

ylor; Ariz. SupCt, 7/8/75)

CLARIFICATION

In reporting as a decision in brief U.S. v. Gallo, 17 CrL 2283 (USDC Conn), the Criminal Law Reporter referred to a federal prosecutor's "deliberate misrepresentations" to a grand jury about the reasons why an earlier indictment returned by another grand jury had been dismissed. The court did not use these words in describing the prosecutor's conduct. For purposes of clarification of the issues originally treated, a digest of the court's opinion appears below.

Digest of Opinion: [*Text*] This motion to dismiss challenges the questionable procedures employed by the government's attorney to secure a second indictment against the defendants. The prosecutor obtained the present indictment by submitting to the grand jury written transcripts of a witness's testimony before a prior grand jury, and by informing the second grand jury that he was seeking to make mere technical corrections in the first charge.

The facts are not in dispute. On November 28, 1972, Jerome Buckley, the chief government witness in this case, appeared before a grand jury in Hartford, described his role in an illegal gambling business, and testified as to the participation of the defendants in the business. In one portion of his testimony, Buckley described a gathering in Easton, Connecticut, where the various members of the gambling syndicate including defendant Gallo met to centralize its operations after the death of a key figure. On June 13, 1973, Buckley appeared before the same grand jury and admitted that he had fabricated the story of the Easton meeting. Buckley explained that there had been friction between Gallo and himself and that he had cooperated with federal authorities to insure Gallo's indictment. After confessing his perjury, Buckley reaffirmed the rest of his testimony concerning Gallo's involvement in a "policy playing" racket. On the basis of Buckley's testimony, the identification of certain gambling records, and the testimony of a police officer who performed surveillance of the gambling operations in 1972, the grand jury returned an indictment against the defendants in Criminal No. B-96, filed on June 14, 1973. • • •

Subsequently, the government concluded that there were several errors in the initial true bill. Not only did the indictment charge that the defendants' activities in violation of 18 U.S.C. §1955 commenced before the effective date of that statute, but also the Connecticut state statute allegedly violated was cited mistakenly. The government therefore dismissed the charges in Criminal No. B-96 after obtaining the present indictment in Criminal No. B-74-13. This true bill corrects the aforementioned errors • • •.

It is the manner in which the government attorney, Mr. Paul Coffey, procured the instant indictment which gives rise to the defendant's present claim. On February 27, 1974, having decided to seek a new indictment against defendants, Mr. Coffey convened a grand jury in Hartford. This grand jury was composed of individuals entirely different from the panel which returned the indictment in Criminal No. B-96, because the term of the previous grand jury had expired. When Mr. Coffey appeared before this new grand jury, he stated at the outset that he was seeking an indictment of the defendants and that he was supplying the grand jury with transcripts of the testimony of "Gerald" Buckley before a previous grand jury on November 28, 1972, and on June 13, 1973. This testimony, the prosecutor said, had resulted in a prior indictment of the defendants by the preceding grand jury. He then explained that the proposed indictment he was submitting to the jurors was a "superseding indictment" which changed the first true bill in two ways. First, the new indictment changed the initial date when the gambling business was alleged to have operated, "to avoid . . . charging the Defendants with an offense which was not a criminal offense." Second, the new indictment changed the citation of the state law being violated to "[t]he technically correct citation." In concluding his brief remarks, the government attorney stated that the probable cause upon which the previous grand jury had returned the prior charges consisted of

Buckley's testimony as well as the identification of certain gambling records and the testimony of a police officer who had performed surveillance of the policy operation. Mr. Coffey then departed, leaving for the consideration of the grand jury the "superseding indictment" and the transcripts of Mr. Buckley's testimony. The grand jurors deliberated briefly and returned the instant indictment. • • •

The defendants contend, inter alia, that the manner in which this indictment was secured violated the Second Circuit's principles relating to the excessive use of hearsay testimony in grand jury proceedings. U.S. v. Estepa, 471 F.2d 1132 (2 Cir. 1972); U.S. v. Leibowitz, 420 F.2d 39 (2 Cir. 1969) • • • • • •

The Supreme Court has pointed out on several occasions that one purpose of the requirement that an individual be indicted by a grand jury is to place between the prosecutor and the accused an independent body, which can evaluate the evidence and determine if the charge is based upon reason. • • • The accused has a right "to have the grand jury make the charge on its own judgment." Stirone v. United States, [361 U.S.] at 219. • • •

In a series of cases culminating in U.S. v. Estepa, the Second Circuit has "condemned the casual attitude with respect to the presentation of evidence to a grand jury manifested by the decision of the Assistant United States Attorney to rely on [hearsay] testimony . . . " Id. at 1135. Criticism has been leveled not only at any government practice which may have misled the grand jurors into thinking that the hearsay testimony they were hearing was an eyewitness account, U.S. v. Leibowitz, at 42, but also at any conduct of the prosecutor in the presentation of hearsay evidence that does not make clear to the jurors "the shoddy merchandise they are getting so they can seek something better if they wish." U.S. v. Payton, 363 F.2d 996, 1000 (2 Cir.) (Friendly, J. dissenting), cert. denied, 385 U.S. 993 (1966). • • •

Disturbed at the apparent disregard of its warnings to prosecutors in this Circuit concerning the widespread use of hearsay evidence before grand juries, the Court of Appeals felt compelled in Estepa to reverse the judgments of conviction because in the proper exercise of its judicial duties, it could not content itself with "yet another admonition."

Applying these general principles to the facts of the instant case, it is evident to the Court that a dismissal of the indictment is required for several reasons.

First, there was an affirmative duty on the part of the prosecutor under the circumstances here to enlighten the grand jurors as to the hearsay quality of the evidence they were receiving. The prosecutor should also have informed the jurors that Mr. Buckley was available for live testimony in the event they wished to evaluate his credibility for themselves and not rely on the judgment of the preceding grand jury. At a minimum, the government attorney was obligated to provide some guidance as to how the jurors should utilize the two transcripts in determining whether or not an indictment should be returned. To be sure, the jurors realized that they were not going to hear from a live witness. Yet, it cannot be assumed that they possessed the astuteness to evaluate properly the reliability and trustworthiness of the hearsay evidence. In fact, it is reasonable to draw an inference to the contrary, since Mr. Buckley was an admitted perjurer and his demeanor evidence was particularly important in order for the grand jury to determine whether he was engaging in further fabrications. • • •

Second, the prosecutor failed to alert the second grand jury that the transcripts upon which it was to base an indictment were permeated with perjurious statements as to crucial, material events. Buckley's false testimony before the first grand jury poisoned the waters of evidence. This impurity could be removed only with careful and conscientious deliberation by the jurors. • • • While the first grand jury was fully aware of the discrepancies in Buckley's testimony before it returned the original indictment, it cannot be assumed that the second grand jury recognized that portions of the evidence before it were tainted. This stain of falsehood should have weighed heavily in the balance before the second indictment was returned. The defendants cannot be permitted to stand trial on an indictment which to the government's knowledge may have been founded on perjured testimony. • • •

Third, for some unexplained reason, the prosecutor failed to supply the second grand jury with the full and complete record of the proceedings before the first grand jury. In light of Buckley's offensive and wilful lies to the prior grand jury, the corroborating evidence of the testimony of the police officer and the gambling paraphernalia was essential for a thorough evaluation by the second grand jury of the government's case against the defendants.

Fourth, the second grand jury was composed of individuals different from those who had first indicted the defendants. • • •

Having decided to dismiss the first indictment and return for another indictment before a new grand jury, the government was bound to follow the rules and not to attempt a loose, short-cut procedure fraught with deficiencies of constitutional dimension. • • •

Finally, this Court on prior occasions has had cause to remind the Assistant United States Attorneys in this District of the representation made to the Second Circuit by a Connecticut federal prosecutor in U.S. v. Messina, 388 F.2d 393, 394 n.1 (2 Cir.), cert. denied, 390 U.S. 1026 (1968): "Counsel for the government advises us that since the Umans decision it has been the practice in the District of Connecticut to present to the grand jury only testimony of witnesses with first-hand knowledge except when such witnesses are unavailable or cannot be summoned without causing them extreme inconvenience." In the exercise of its supervisory powers over the conduct of judicial business in this District, this Court must not condone the actions of the prosecutor in the case at bar with "yet another admonition." [*End Text*] —Zampano, J.
(U.S. v. Gallo; USDC Conn, 5/30/75)

DECISIONS IN BRIEF

The cases digested below have been selected as worth reporting, but are considered suitable for abbreviated treatment. Texts of these decisions are also available for loan to any subscriber or request.

CRUEL AND UNUSUAL PUNISHMENT — LIFE SENTENCE FOR HEROIN SALE

A state statute prescribing mandatory life punishment for the sale of heroin does not constitute cruel and unusual punishment, the Louisiana Supreme Court holds. "The penalty imposed is not so grossly disproportionate to the crimes charged as to shock the sense of justice. Cf. Castle v. U.S., 399 F. 2d 642 (5th Cir. 1968); Houle v. U.S., 463 F. 2d 1137 (5th Cir. 1972). Narcotic traffic is but one phase of a large scale, well entrenched criminal activity that springs from human greed and preys on man's weakness — one that turns buyers into sellers, makes addicts out of newborn infants and sets addicts to mugging, thievery, prostitution, robbery and murder to support an insatiable appetite. The punishment fits the crime. People v. Gardner, 359 N.Y.S. 2d 196 (1974)."
(State v. Stetson; La SupCt, 7/25/75)

DRUGS — PROOF OF POSSESSION

Mere presence in a room with illegal drugs is not enough to support a possession conviction, the Illinois Appellate Court, Third District, says, agreeing on this

FILED
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U. S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

V. : CRIMINAL NO. H-524

DAVID GUILLETTE, :
ROBERT JOOST, and
NICHOLAS ZINNI :

RULING ON MOTIONS FOR JUDGMENT OF ACQUITTAL

Defendants Joost, Guillette, and Zinni have moved for judgments of acquittal on a variety of grounds. Fed. R. Crim. P. 29.

Joost and Guillette contend that judgment of acquittal should be entered with respect to the "death resulting" allegation of Count 1. Their argument is based upon the jury's verdicts finding Joost and Zinni not guilty of Counts 2 and 3. The argument, in essence, is that since the jury found Joost and Zinni not guilty of the substantive offense of obstructing justice by intimidating LaPolla, the jury necessarily concluded that Joost and Zinni were not engaged in a joint venture with Guillette and therefore could not have conspired with Guillette in a conspiracy that resulted in LaPolla's death. It is true that the jury was instructed that they could find Joost and Zinni guilty of Counts 2 and 3 upon a finding that these defendants and Guillette were involved in a joint venture and that one of the defendants in furtherance of that joint venture committed

the substantive offenses charged in Counts 2 and 3. Whether the jury fully understood this option is open to some doubt. They were also instructed that they could apply the Pinkerton rule, and convict on the substantive offenses if they found that the defendants were members of a conspiracy and that one of the conspirators, in furtherance of the conspiracy, committed one of the substantive offenses. The jury was unable to reach any verdict on the conspiracy count or on Counts 2 and 3 with respect to defendant Guillette, thus leaving in great uncertainty what issues respecting Count 1, if any, ought to be considered precluded by the verdicts on Counts 2 and 3. Cf. Hoag v. New Jersey, 356 U.S. 464 (1958).

In any event, acquittal on a substantive count does not bar conviction on a conspiracy count, even when the conspiracy alleged is one to commit the very substantive offense on which there was an acquittal. See United States v. Cioffi, 487 F.2d 492, 498-99 (1973), cert. denied sub nom. Ciuzio v. United States, 416 U.S. 995 (1974). Here the conspiracy count under 18 U.S.C. § 241 does not allege an agreement to commit the substantive offenses charged in Counts 2 and 3. Even if the jury's verdicts preclude relitigation of whether there was a joint venture involving the commission of the substantive offenses alleged in Counts 2 and 3, those verdicts do not require acquittal on Count 1, charging a conspiracy to violate LaPolla's civil rights with death resulting. That death could still be the result of the conspiracy alleged in Count 1, even if a joint venture to commit the substantive offenses in Counts

2 and 3 cannot be established beyond a reasonable doubt. Whether the acquittals may restrict admissibility of evidence upon retrial is a matter for the trial judge. See United States v. Cioffi, supra.

Joost and Guillette next contend that they were entitled to have the claims against them considered by a new grand jury, once the witness John Housand, who testified before the grand jury, alleged that his testimony had been perjurious. It is doubtful that this claim is open at this point. Judge Clarie, in granting defendants' motions for new trial after the first convictions, ordered a new trial and specifically rejected the claims that the indictment should be dismissed. That ruling would appear to be the law of the case, as far as further proceedings in the District Court are concerned. To the extent the issue has not been foreclosed, this Court rejects the claim. This is not a situation, such as confronted Judge Zampano in United States v. Gallo, ___ F. Supp. ___ (D. Conn. 1975), where the prosecutor asked a grand jury to indict in part on the basis of prior grand jury testimony that included statements known at that time to be false. In this case there is no basis for challenging the return of the indictment. There is no basis for claiming that the government knew at the time that Housand was lying. Indeed, it is not even clear now whether he was lying in his initial testimony or in his recantation. In any event, the indictment having been validly returned, it is sufficient to call for trial, even if after its return some of the evidence

presented to the grand jury is subsequently alleged to be false.

Defendants next allege various instances of what they characterize as government misconduct. Most of these matters have previously been presented to Judge Clarie, who concluded that a new trial, not dismissal, was appropriate. Again, to the extent these claims have not been ruled upon, this Court finds no basis in any of the matters alleged to enter judgment of acquittal.

Finally, Joost and Guillette urge this Court to conclude that the key witness in the second trial, Marrapese, committed perjury; an evidentiary hearing is sought at which defendants wish to prove certain allegations submitted to the Court in the form of an affidavit of counsel. Counsel have requested that this affidavit be submitted for in camera consideration. If the affidavit were sufficient to grant the ultimate relief defendants seek, it would surely have to be disclosed and served upon the prosecutor. The Court has reviewed the affidavit and concluded that it is neither sufficient to enter judgment of acquittal nor to require an evidentiary hearing to determine the matters alleged therein. At most, it alleges matters that are impeaching on collateral issues. Whether such impeachment will be permitted at the retrial is a matter within the discretion of the trial judge. Even if all of the matters alleged are true, they would not warrant a judgment of acquittal, since none of the matters alleged concerns the allegations of the offenses charged in

the indictment. Since the affidavit is not sufficient to warrant relief, the Court will accede to defendants' request that it remain for in camera consideration, so that their opportunity for effective cross-examination upon retrial will not be impaired.

On the issue of Marrapese's credibility, the Court does entertain doubts about some of his testimony; however, fair jury issues are presented, and the Court does not believe that the issues of credibility are such that they can be removed from the jury's consideration.

Finally, defendant Zinni earnestly presses his claim concerning the insufficiency of the evidence, a matter on which the Court reserved decision before submitting his case to the jury. Tested against the prevailing standard, see United States v. Taylor, 464 F.2d 240 (2d Cir. 1972), the case against Zinni is surely close to the line of sufficiency, but the Court is satisfied that it is above the line. The key item of evidence is the testimony that after co-conspirators, not including Zinni, agreed to have John Housand kill LaPolla and split the $5,000 cost four ways, one of the co-conspirators told Zinni of this plan, and Zinni responded with a remark that can reasonably be interpreted as expressing approval of the decision to hire Housand. If Zinni were a bystander with respect to the purpose of the Housand hiring, his approving remark might not be sufficient to implicate him. However, he was one of four defendants then under indictment on charges to which LaPolla was understood to be the key witness. The

other three accused had been in the meeting at which the hired killing was discussed. When a person in those circumstances expresses approval of the hired killer, a jury can reasonably conclude that he is doing more than expressing a disinterested assessment of a criminal's competence. A jury could reasonably conclude beyond a reasonable doubt that upon hearing of the proposed four-way split of the $5,000 fee, Zinni understood that he was being invited to participate as one of the four accused who would share the cost, and his approving remark, in that context, can reasonably be taken to signify a joining of the plan.

The motions for judgment of acquittal as to all three defendants are denied. The affidavit submitted by counsel for Joost and Guillette may be sealed for inspection only by a reviewing court.

Dated at New Haven, Connecticut, this 17 day of October, 1975.

Jon O. Newman
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
vs.	:	CRIMINAL NO. H-524
	:	
DAVID GUILLETTE and ROBERT JOOST	:	

MOTION TO DISMISS INDICTMENT BECAUSE OF MISCONDUCT OF A GOVERNMENT AGENT TO WIT: JOHN A. HOUSAND

Pursuant to the Double Jeopardy Clause of the Fifth Amendment to the United States Constituion, the defendants, David Guillette and Robert Joost move to dismiss the indictment against them on the ground that a second trial of them on such indictment is barred for the following reasons:

1. At their original trial the key government witness against them was one John Anthony Housand, who, at the time of such trial, was an agent, servant or employee of the United States of America in that he was then receiving from the government money, goods, services and other considerations in return for his sworn testimony.

2. At such trial the said, John Anthony Housand, knowingly and wilfully perjured himself in a material way to the detriment of these defendants.

3. Such perjured testimony prevented these defendants from having the issue of their guilt or innocence fully and fairly

presented to and resolved by a single jury.

4. As a result, at least in part of the perjury by the said John Anthony Housand, on April 18, 1975, the United States District Court for the District of Connecticut set aside the verdict and judgment of guilty against these defendants and ordered a new trial of them.

5. The setting aside of the verdict and judgment of guilty [illegible] their first trial is not the result of any acts or failures to act on the part of these defendants but is the result of the perjury of a paid government witness.

6. Therefore, these defendants having once been put in jeopardy, a retrial of them constitutes a violation of the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

Dated at Hartford, Connecticut, this 14th day of October, 1975.

DAVID GUILLETTE

By Hubert J. Santos

Hubert J. Santos
Buckley & Santos
51 Russ Street
Hartford, Connecticut

ROBERT JOOST

By James A. Wade

James A. Wade
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut

CERTIFICATION

I hereby certify that a copy of the foregoing motion was mailed to Paul Coffey, Special Attorney, Department of Justice, 450 Main Street, Hartford, Connecticut; C. Thomas Zinni, Esquire, 53 Mt. Vernon Street, Boston, Massachusetts 02103; and Andrew Bucci, Esquire, 9 Steeple Street, Providence, Rhode Island, this 14th day of October, 1975.

James A. Wade

James A. Wade

BEST COPY AVAILABLE

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
vs.	:	CRIMINAL NO. H-524
	:	
DAVID GUILLETTE and ROBERT JOOST	:	
	:	

MOTION TO DISMISS BECAUSE OF WILFUL NON-DISCLOSURE OF BRADY MATERIAL BY THE PROSECUTING ATTORNEY

The defendants, DAVID GUILLETTE and ROBERT JOOST, move that the indictment against them be dismissed on the ground that the government attorney in their first trial wilfully failed to turn over to them psychiatric data relative to John A. Housand which cast light on his credibility and constituted Brady material in violation of the order of this court. In support of said motion these defendants represent to the court as follows:

1. Subsequent to the so-called Noblemet hearing but prior to Housand's testimony before the jury the prosecuting attorney, Paul Coffey, came into possession of certain court martial records which included a medical diagnosis that Housand was legally competent but also that he had a "personality disorder, namely, emotional instability reaction, manifested by impulsive acts, emotional liability, and poorly controlled hostility with anxiety and guilt feelings".

2. Mr. Coffey testified that he read and understood this report, that he was aware of the rule derived from Brady v. Maryland and its progeny, that he was aware of this court's order to turn over Brady material to the defense and that he made a legal and intellectual judgment that this information did not constitute Brady material.

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3. As a result of such legal and intellectual judgment, Mr. Coffey failed to turn said material to the defense.

4. Such failure constituted a wilful non-disclosure of Brady material in violation of this court's order and the Due Process Clause of the Fifth Amendment.

Dated at Hartford, Connecticut this 14TH day of October, 1975.

DEFENDANT, DAVID GUILLETTE

By Hubert J. Santos

Hubert J. Santos
His Attorney
Buckley & Santos
51 Russ Street
Hartford, Connecticut

DEFENDANT, ROBERT JOOST

By James A. Wade

James A. Wade
His Attorney
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut

CERTIFICATION

I hereby certify that a copy of the foregoing motion was mailed to Paul Coffey, Special Attorney, Department of Justice, 450 Main Street, Hartford, Connecticut; C. Thomas Zinni, Esquire, 53 Mt. Vernon Street, Boston, Massachusetts 02103; and Andrew A. Bucci, Esquire, 9 Steeple Street, Providence, Rhode Island, this 14TH day of October, 1975.

James A. Wade

James A. Wade

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
vs.	:	CRIMINAL No. H-524
	:	
DAVID GUILLETTE and ROBERT JOOST	:	
	:	

MOTION TO DISMISS INDICTMENT BECAUSE OF THE FAILURE OF THE GOVERNMENT TO PRESENT ALL RELEVANT EVIDENCE TO THE GRAND JURY

The defendants, DAVID GUILLETTE and ROBERT JOOST, dismiss the indictment against them on the ground that the government failed to present all the evidence available to it to the grand jury in that it deliberately failed to present John Housand's claim that Andrew Bucci was allegedly present at the so-called conspiratorial meeting of May 8, 1972 because to do so would weaken its case against these defendants. As a result of such failure, the indictment returned against these defendants was not the product of an impartial consideration of all relevant evidence but was the result of the deliberate withholding of certain material evidence by the government in violation of the rights guaranteed by the Fifth Amendment.

Dated at Hartford, Connecticut this 14th day of

October, 1975.

DAVID GUILLETTE

By Hubert J. Santos
Hubert J. Santos
Buckley & Santos
51 Russ Street
Hartford, Connecticut

ROBERT GOOST

By James A. Wade
James A. Wade
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut

CERTIFICATION

I hereby certify that a copy of the foregoing motion was mailed to Paul Coffey, Special Attorney, Department of Justice, 450 Main Street, Hartford, Connecticut; C. Thomas Zinni, Esq., 53 Mt. Vernon Street, Boston, Massachusetts 02103; and Andrew A. Bucci, Esq., 9 Steeple Street, Providence, Rhode Island, this 14TH day of October, 1975.

James A. Wade
James A. Wade

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
vs.	:	CRIMINAL NO. H-524
	:	
DAVID GUILLETTE and ROBERT JOOST	:	

MOTION TO DISMISS COUNT I.

The defendants, David Guillette and Robert Joost, respectfully request the Court to dismiss Count I of the Indictment for the reason that the Court does not have jurisdiction over the matters alleged.

Attached hereto is memorandum of law which more fully sets forth the reasons the motion should be granted.

Dated at Hartford, Connecticut this 14th day of October, 1975.

DAVID GUILLETTE

By Hubert J. Santos

Hubert J. Santos
Buckley & Santos
51 Russ Street
Hartford, Connecticut

ROBERT JOOST

By James A. Wade

James A. Wade
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut

Certification

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James A. Wade

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UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
V.	:	CRIMINAL NO. H-524
	:	
DAVID GUILLETTE, ET AL	:	

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS COUNT I

The indictment alleges that the four defendants conspired to injure, oppress, threaten, and intimidate Daniel LaPolla in the free exercise and enjoyment of his right to give information to proper authorities and his right to be a witness in a federal judicial proceeding.

18 USC §241 deals with a conspiracy to deprive a citizen of the United States of his rights and privileges secured to him by the Constitution and the laws of the United States. There has been substantial litigation to determine the scope of 18 USC §241. One of the questions raised in the instant case is whether §241 encompasses the rights alleged to have been violated by the four defendants. The case of In Re Quarles and Butler, 158 U.S. 532 (1895), involved an interference with a person who gave authorities information of an internal revenue violation. The Supreme Court commented on the right involved.

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> ...It is the right of every private citizen of the United States to inform a marshal of the United States, or his deputy, of a violation of the internal revenue laws of the United States; that this right is secured to the citizen by the Constitution of the United States... Id. at 537

Another case which is cited for the same proposition is United States v. Keown, 19 F. Supp. 639 (D.C. Ky., 1937). This case involved an action brought under §5508 Revised Statutes, U.S., the forerunner to 18 USC §241. The language in §5508 dealing with the conspiracy and rights involved was the same as in the present 18 USC §241. The case involved a violation of federal liquor laws. The Court, like the Supreme Court in Quarles, made a statement concerning the production of information to authorities.

> The right of a citizen informing of a violation of law, like the right of a prisoner in custody upon a charge of such violation, to be protected against lawless violence, does not depend upon any of the amendments to the constitution, but arises out of the creation and establishment by the constitution itself of a national government, paramount and supreme within its sphere of action. Id. at 642

While these cases previously cited discuss the giving of information to authorities, they do not approach the issue of a citizen as a witness in a federal proceeding.

The case of United States v. Sanges, 48 F. 78 (C.C.Ga., 1891), writ of error dismissed, 144 U.S. 310 (1892), is the case most closely on point. The facts involve a grand jury indictment under §5508 and §5509 Revised Statutes, U.S., for conspiracy to injure and oppress a citizen of the United States in the exercise of his civil rights and for the murder of said citizen. The Court framed two issues in the case.

> Does an indictment which charges the defendant with conspiring to oppress and injure a citizen of the United States in the exercise of his right to appear and testify as a witness before the grand jury of a federal court, and also with having, in pursuance of such conspiracy, murdered him, because of his having exercised that right, describe an offense within the sections referred to? Is the right to appear as a witness and to testify before a grand jury of a federal court a right secured by the Constitution and laws of the United States, in the sense in which that language is employed in those sections? (emphasis added) Id. at 81

It should be noted that the above issues also exist in the instant case. The Circuit Court found that the right to be a witness in a grand jury of a federal court was not a right encompassed by §5508. The Court went into the Legislative History of the statute to determine its applicability. The statute was originally entitled the "Enforcement Act". Its

> with conspiracies to interfere with "Federal Rights and with all Federal rights". Id. at 803

The proponents of the same proposition also cite Motes v. United States, 178 U.S. 458 (1900), to support the claim that the right to give information to authorities and to be a witness in a federal prosecution are secured by the Constitution and the laws of the United States and, therefore, encompassed within §241. Motes dealt with a witness who informed authorities of an internal revenue violation. The Supreme Court commented in dicta on the scope of §5508 and §5509.

> It was the right and privilege of Thompson (the witness) in return for the protection he enjoyed under the Constitution and the laws of the United States, to aid in the execution of the laws of his country in giving information to the proper authorities of violations of those laws. That right and privilege may properly be said to be secured by the Constitution and laws of the united States. And it was competant for Congress to declare a conspiracy to injure, oppress, threaten or intimidate a citizen because of the exercise by him of such right or privilege to be an offense against the United States. Id. at 462-463.

It should be noted that Motes v. United States is cited only for the proposition that the mere unavailability of a witness is not enough and if the prosecution wants to use a witness's prior testimony it first has a duty to try to produce him. The dicta of the Supreme Court should be treated as dicta.

On April 8, 1968, the Supreme Court decided the case of United States v. Johnson, 390 U.S. 563 (1968). Once again the Court took on the task of interpreting the concededly vague language of 18 USC §241.

> We think that history leaves no doubt that, if we are to give §241 the scope that its origins dictate, we must accord it a sweep as broad as its language. Id. at 566

The case of United States v. Johnson, however, preceded an important amendment to 18 USC §241 by three days. H.R. 2516, Public Law 90-284; 82 Stat. 73 (April 11, 1968), amended 18 USC §§241 and 242. The amendment was incorporated in 18 USC §245. The legislative history of this amendment is crucial to the issues presented in our instant case. The legislative history is found in U. S. Code Congressional and Administrative News, 90th Congress, 2nd Session - 1968, at 1837. The history explains that the 1968 amendment to §241 was in response to remarks made by Mr. Justice Brennan in United States v. Guest, 383 U.S. 745, 746 (1967). There Mr. Justice Brennan commented on the vague language of §241.

> ...(S)ince the limitation on the statute's effectiveness derives from Congress failure to define- with any measure of specificity - the rights encompassed, the remedy is for congress to write a law without this defect. U. S. Code Congressional and Administrative News, supra, at 1841

> ...(S)ince the limitation on the statute's effectiveness derives from Congress failure to define- with any measure of specificity - the rights encompassed, the remedy is for congress to write a law without this defect. U. S. Code Congressional and Administrative News, supra, at 1841

The Congress then stated how they planned to comply with Mr. Justice Brennan's suggestion.

> H. R. 2516 meets this need by spelling out the kinds of activity to be protected and the bill provides an effective means of deterring and punishing forcible interference with the exercise of Federal rights. The clear language of the bill would avoid unnecessary litigation concerning coverage and would provide unmistakable warning to lawless elements not to interfere with any of these activities.

The Congress decided to enumerate the activities to be encompassed by 18 USC §241 and spelled out that activity to dispell future unnecessary litigation.

> The areas of protected activity are specifically described. They include voting and activities related to voting; enrolling in or attending public schools or public colleges; participating in or enjoying the benefits of services, programs, facilities, or activities of Federal, State, or local governments; enjoying employment, union membership, or the services of employment agencies; serving on juries; using vehicles, terminals, or facilities of common carriers; participating in programs or activities receiving Federal assistance, and enjoying the facilities of hotels, restaurants, and other public accomodations. The Statute would punish interference or attempts to interfere, by force, or threat of force, with any person because of his race, color, religion, or national origin and because such person is or has been engaged or seeking to engage, while acting lawfully, in any of the enumerated activities. Id. at 1838-1839

A reading of the activities enumerated by Congress shows that the rights alleged to have been violated by the four defendants in our instant case may be rights as such, but not rights in the sense in which the language is employed in 18 USC §241. Congress took a drastic step in enumerating what activities were to be encompassed by §241. In construing this amendment one must utilize the theory of expressio unius est exclusio alterius. By specifically enumerating what activities were encompassed by §241, the Congress also excluded from the scope of §241 any non-enumerated activities. This action may well have been intended to exclude the very charges alleged in our instant case from being within the jurisdiction of the Federal court system by way of 18 USC §241. This attitude was expressed very well in United States v. Patrick, 54 F. 288 (D.C. Tenn., 1893).

> It is no more the duty or within the power of the United States to punish for a conspiracy to falsely imprison or murder within a state, than it would be to punish for false imprisonment or murder itself. Id. at 351

The legislative history of 18 USC §241 demonstrates that throughout the years its scope was enlarged far beyond the expectations of the original framers. The official title of the "Enforcement Act" was "An Act to enforce the Right of Citizens of the United States to vote in the several states of this Union, and for other purposes." This act had its name changed to §5508 Revised Statutes, U.S., and finally to 18 USC §241. H. R. 2516 delimits the rather broad scope that §241 had assumed through various court decisions.

The allegations in Count One of the indictment in our instant case states a violation of rights not encompassed within the scope of 18 USC §241 and, therefore, fails to state

10-20-75
The within motion is in all respects denied. So ordered
Lloyd F. MacMahon
U. S. D. J.

FILED
OCT 16 1 41 PM '75
U.S. DISTRICT COURT
BRIDGEPORT, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
vs.	:	CRIMINAL NO. H-524
	:	
DAVID GUILLETTE and ROBERT JOOST	:	
	:	

MOTION TO DISMISS DEATH RESULTING ASPECT OF COUNT I

Insofar as Count I charges the defendant, ROBERT JOOST, with participation in a conspiracy, which conspiracy resulted in the death of the witness, Daniel LaPolla, this defendant moves the court to dismiss the death resulting aspect of Count I against him. In support of this motion, this defendant alleges as follows:

1. A jury found this defendant not guilty of intimidating the witness Lapolla (Count II) and not guilty of using a dynamite bomb to influence and injure the witness LaPolla (Count III).

2. Counts II and III constitute the underlying substantive offenses upon which Count I is based.

3. The guilt or innocence of this defendant relative to Counts II and III was submitted to a jury, upon the legal theory that the jury would have to find that this defendant participated in a joint venture with one or more of the other alleged conspirators in order to find this defendant guilty of either or both of these counts.

4. A jury having acquitted this defendant of Counts II and III, it concluded upon the facts and law submitted to it that this defendant did not engage in a joint fenture to intimidate, influence or injure the witness LaPolla.

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5. The findings of said jury on Counts II and III are dispositive of the fact question of whether or not the conspiracy allegedly entered into by this defendant on May 8, 1972 resulted in the death of the witness LaPolla, that conspiracy having been terminated according to the government's witness Marrapese.

6. Neither the indictment nor the government's bill of particulars alleges that this defendant entered into any other conspiracy to kill the witness LaPolla other than the alleged conspiracy of May 8, 1972.

7. The underlying substantive offenses having merged with the conspiracy alleged contained in Count I, the court should dismiss the death resulting aspect of Count I as alleged against this defendant.

DEFENDANT, ROBERT JOOST

By James A. Wade

James A. Wade
His Attorney
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut 06103

CERTIFICATION

I hereby certify that a copy of the foregoing motion was mailed to Paul Coffey, Special Attorney, Department of Justice, 450 Main Street, Hartford, Connecticut; Hubert J. Santos, Esquire, Buckley & Santos, 51 Russ Street, Hartford, Connecticut; C. Thomas Zinni, Esquire, 53 Mt. Vernon Street, Boston, Massachusetts 02103; and Andrew Bucci, Esquire, 9 Steeple Street, Providence, Rhode Island, this 14th day of October, 1975.

James A. Wade

James A. Wade

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
vs.	:	CRIMINAL NO. H-524
DAVID GUILLETTE and ROBERT JOOST	:	

MOTION FOR SEVERANCE BY DEFENDANT ROBERT JOOST

The defendant, ROBERT JOOST, moves that his trial be severed from that of the defendant, DAVID GUILLETTE, and that he be tried separately for the following reasons:

1. It is anticipated that William Marapese will testify as a witness for the government. It is further anticipated that the said Marapese will testify about an alleged conspiratorial meeting on May 8, 1972 at which a plot to kill DANIEL LA POLLA was hatched, that John Housand was hired to kill LaPolla and that the instrument of death was to be a gun. It is further anticipated that the said Marapese will testify that this conspiracy was terminated when he, Marapese, ordered that "the gun be taken off of LaPolla".

2. It is further anticipated that the said Marapese will testify that another meeting took place in September, 1972 at Andrew Bucci's office at which this defendant was present but said nothing.

3. The alleged conspiracy to kill Daniel LaPolla ter-

minated on September 29, 1972 when LaPolla died.

4. It is further anticipated that the said Marrapese will testify that subsequent to the termination of the alleged conspiracy the defendant Guillette and one, EDWARD SITKO, made several incriminating statements which may be admissible evidence against defendant Guillette but which constitute inadmissible hearsay insofar as the defendant Joost is concerned.

5. The statements that Marrapese claims that Guillette made, which were not said in the presence of defendant Joost are:

a) On the day LaPolla died, Marrapese claims to have run into Guillette and Sitko. He says Guillette said, "I just left a package for your buddy up there."

b) On April 15, 1973, Marrapese claims to have engaged Sitko and Guillette in conversation while having lunch. He claims that Sitko said, after reading about letter bombs in a newspaper, "That's the way we should have killed LaPolla." Marrapese then goes on to relate in detail how Guillette, Sitko and one, Red Houle broke into LaPolla's house and set an explosive device.

6. The foregoing alleged statements attributed by Marrapese to either Guillette or Sitko are so inflammatory and prejudicial that if they are testified to before a jury, their impact cannot be ignored by a jury, which impact cannot be cured by an instruction to the jury that they are not to be considered as evidence against defendant Joost.

WHEREFORE, defendant Joost respectfully moves for a severance from the defendant Guillette.

Dated at Hartford, Connecticut this 14TH day of October, 1975.

ROBERT JOOST

By James A. Wade

James A. Wade
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut

CERTIFICATION

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James A. Wade

James A. Wade

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
vs.	:	CRIMINAL NO. H-524
	:	
DAVID GUILLETTE and ROBERT JOOST	:	
	:	

MOTION FOR SEVERANCE BY DEFENDANT ROBERT JOOST

The defendant, ROBERT JOOST, respectfully moves that the trial of his case be severed from that of the defendant, DAVID GUILLETTE, for the following reasons:

1. Having been found not guilty by a jury of Counts II and III of the indictment, the only charge outstanding against this defendant upon which he can be tried is Count I.

2. Count I charges this defendant with conspiracy to violate the civil rights of one Daniel LaPolla.

3. Counts II and III of the indictment charge the defendant, DAVID GUILLETTE, with the substantive offenses of intimidating a witness by force and violence and with use of a dynamite bomb to intimidate a witness.

4. It is anticipated that evidence of such substantive offenses will be introduced into evidence by the government against the defendant, DAVID GUILLETTE, which evidence is not admissible against this defendant, but is of such a prejudicial nature that the consideration of same by a jury will color its consideration of this defendant's case.

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5. If such inadmissible evidence is admitted, the prejudicial effect of same insofar as this defendant is concerned cannot be cured by an instruction from the court.

WHEREFORE, this defendant moves that his case be severed from the defendant, DAVID GUILLETTE.

DEFENDANT ROBERT JOOST

By James A. Wade

James A. Wade
His Attorney
Robinson, Robinson & Cole
799 Main Street
Hartford, Connecticut 06103

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James A. Wade

James A. Wade

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